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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. _____

JOSEPH J. WEBSTER, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I

When a criminal defendant's clinically establishable chemical imbalance-which is exhibited on the record-compels him to represent himself at trial, does the Constitution and Title 18 Section 4244 require the restriction of the exercise of the right to self-representation?

II

What Constitutional requirements, if any, are necessary precautions to prevent a defendant from an involuntary in pro per status in a criminal proceeding?

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Joseph J. Webster, Petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on February 22, 1983.

OPINION BELOW

Pursuant to Rule 19 of the Rules of the United States Court of Appeals for the Sixth Circuit, no opinion was issued. The case was dispose of in open court at the time for Oral Argument affirming a judgment of conviction of petitioner for failure to file tax return in violation of 26 USC 7203 and false withholding exemption certificate in violation of 26 USC 7205.

Petitioner was tried in the District Court by a jury and there is no opinion of that court.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on February 22, 1983. This Court's jurisdiction to review that judgment is conferred by Title 28 United States Code, Section 1254 (1).

QUESTIONS PRESENTED

I

When a criminal defendant's clinically establishable chemical imbalance-which is exhibited on the record-compels him to represent himself at trial, does the Constitution and Title 18 USC Section 4244 require the restriction of the exercise of the right to self-representation?

II

What Constitutional requirements, if any are necessary precautions to prevent a defendant from an involuntary in pro per status in a criminal proceeding?

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS AND FEDERAL RULES INVOLVED

The pertinent text of the Federal Constitution. Statutory and Regulatory provisions and the Federal Rules involved is set forth in Appendix C attached hereto. The citations to said provisions are as follows:

United States Constitution

Fifth Amendment

Sixth Amendment

United States Codes

Title 18 U.S.C. § 4244

STATEMENT

On June 5, 1981, petitioner, JOSEPH J. WEBSTER, hereafter WEBSTER, was found guilty and convicted by a jury on all counts of a multi-count indictment in the U.S. District Court for the Eastern District of Michigan, Southern Division - Flint.

A five count indictment was returned by the grand jury against Webster on March 2, 1981. The indictment charged violations of 26 U.S.C. §7203 and 7205.

In Counts One, Three and Five, Webster was charged with failure to file a return for years 1977, 1978, and 1979, respectively, in violation of 26 U.S.C. § 7203.

In Counts Two and Four, Webster was charged with filing a false withholding exemption certificate for years 1978 and 1979 respectively, in violation of 26 U.S.C. §7205.

On May 26, 1981, trial commenced and on June 4, 1981, trial ended.

On June 5, 1981, the jury returned a verdict of guilty on all counts.

On July 14, 1981, Webster was sentenced to imprisonment for a term of one (1) year for each of Counts One, Four and Five, under the provisions of 18 U.S.C. §4205(f) with no parole and fined the sum of Two Thousand ($2,000.00) dollars under Count One. Each term was to be served concurrently.

Under Count Two, Webster was sentenced to imprisonment for a term of one (1) year under provisions of 18 U.S.C. §4205(f) to be served consecutively with the sentence imposed under Count One with no parole and fined the sum of Five Hundred ($500.00) dollars.

As to Count Three, imposition of sentence was suspended and Webster was placed on probation for a period of five (5) years upon the conditions that:

1. He is to file timely and legal income tax returns and provide proof of filing to the probation department,

2. He is not to change his withholding exemption certificates without first obtaining written permission from the probation department,

and

3. He is to submit all financial records to the probation department as requested. This sentence to be served consecutive to that imposed under Count Two.

On February 22, 1983, the Court of Appeals for the Sixth Circuit affirmed his confiction.

Although Webster was accompanied by counsel initially appointed by the Court until his financial status could be determined, Webster represented himself at all of the pretrial hearings directly verbalizing in his own behalf.

During the pretrial conferences, Webster demonstrated signs of emotional stress and irrational and paranoid behavior (TR 7, 9, 14, 22, 33-40, 47-50, 52, 53, 56, 63-65, 75).

At one such hearing on April 7, 1981, to determine if he qualified for Court appointed counsel, Webster repeatedly refused to fill out a financial affidavit or to divulge such information orally under oath, necessary to such a determination (TR 5-14), inspite of the Court's

assurances that this would not constitute a waiver of any rights (TR 7).

Although being fearful of some unseen consequence of attesting to such information, Webster continued to express his desire to have the assistance of counsel (TR 4, 5, 10, 13, 14, 22; supp* TR 7, 9, 10, 13). Webster's repeated refusals were based upon fear of "purjury" (TR 7, 9, 22), and he eventually represented himself at trial without the assistance of counsel.

During a subsequent pretrial conference on May 5, 1981, Webster expressly informed the Court that he was "not competent" to represent himself (TR 33) to which the Court in effect concurred by repeatedly stating that his communications up to that point were "unintelligible" (TR 34, 40), his reasoning was "nonsense" (TR 35) and "gibberish" (TR 35, 38), his ideas were "misguided" (TR 36) and that he was acting like a "fool" (TR 37). Even the government stated

*The abbreviation "supp TR" is used to designate references to a supplemental volume of trial transcript in chambers on May 28, 1981.

that it did not understand Webster's "Theories" (TR 56).

At yet a later pretrial conference on May 21, 1981, Webster stated that he was ignorant of and in effect did not understand the charges against him (TR 45, 47, 48, 51, 56, 71-73). At this same hearing Webster also demonstrated more noticeable signs of an impaired emotional state when at three separate points, he requested time to regain his composure (TR 50, 52, 53).

By way of motions filed by himself and during these hearings, Webster explained to the Court that his wages were not "income" but an exchange for labor, that he did not subscribe to the Custom of Merchants and because of these and various other reasons, he owed no income tax. (TR 44-53, 69-74).

Although his theories were identical to those commonly used by "tax protestors" and which have been repeatedly rejected by the courts, Webster's sole defense was this. Therefore, pursuant to the government's motion in limine, it was ruled inadmissible. (TR 54, 373).

During the trial, Webster, through his own testimony, and other statements, expressed that he was "scared" or "afraid" (TR 363, 379, 391, 408, 409) and under "duress" or "emotional stress" (TR 322, 367, 368, 380, 383, 404, 420; Supp TR 7) that his actions were an attempt to "protect" himself (TR 362, 379, 413) and that he viewed the government as being "hostile" to him (TR 271, 273-275, 278, 281, 282, 314).

At other times during the trial, Webster requested that he be allowed to pause or recess either because of loss of memory or to collect his thoughts (TR 292, 321, 277).

Numerous times throughout the trial, in his own testimony and through other statements in cross-examining witness and addressing the Court, Webster brought up the issue of the definition of "income" (TR 46, 49, 70, 144, 174, 157, 191, 230, 237, 238, 244, 284, 285, 296, 297) and the validity of "checks" (TR 208-210, 212, 213, 220, 221) despite the Court's pretrial ruling that these issues were irrelevant (TR 54) and

therefore not admissable (TR 373, 376). Yet Webster persisted in presenting as his sole defense, these very issues.

In the relatively short period of time during which he attempted to speak at the trial, Webster was cut off by objections more than forty times on various grounds such as hearsay (TR 79), leading (TR 285, 380, 381), calling for a conclusion (TR 314), improper form of question (TR 150, 152, 155, 207-213, 232, 284, 287), and relevance (TR 61, 66, 78-80, 163, 198, 252, 268, 297, 298, 327, 338, 347, 373, 376, 285, 296, 330).

Webster also failed to subpoena several intended witnesses (TR 87, 89, 90), leaving him with only his wife and himself to testify in his behalf.

Other facts are referred to hereafter in the argument.

REASONS FOR GRANTING THE WRIT

The issues presented in this case address the countervailing rights to One, assistance of counsel and Two, self representation and the deprivation and detriments that arise when the latter right is extended too far.

This Court has stated, in Faretta v. California, 422 U.S. 806 (1975) that there is a constitutional right to proceed without counsel when a defendant voluntarily and intelligently elects to do so and with this, petitioner does not contend otherwise.

Petitioner does contend, however, that just as the availability of a constitutional right may be conditioned upon such things as waiver or disclosure, the right to self representation should be similarly conditioned.

And more specifically, whereas it has been upheld that the right to court appointed counsel should be predicated upon a showing of indigency of the defendant, predicating the right to self representation upon some criteria

should not be considered incongruious to constitutional principles.

Webster's behavior during the pretrial and trial proceedings, although often natural and demonstrating above average intelligence, was pregnant with indicators to the trained or even sensitive eye, as to his then existing, but yet undetected mental illness.

At a point some months after the trial, Petitioner, at the direction of his counsel, reluctantly submitted to psychiatric examination which disclosed a disorder diagnosed at the time of intake as Manic Episode, single occurence, and later was changed to Manic-Depressive-Mixed Type, Paranoid Personality. In petitioner's case, this also entailed delusions of grandeur, paranoid ideation, poor judgment, and confusion. Petitioner was prescribed Lithium treatment.[1]

[1]See Appendix , which contains a letter from Dr. Erol Ucer, M.D., Psychiatrist and a Psychological Evaluation of petitioner by William Atchison, A.C.S.W. and Robert Botinelli, Ph.D. This exhibit was admitted on appeal to the Court of Appeals for the Sixth Circuit.

Petitioner contends that considering that his mental deficiency was not detected by the trial court or the United States Attorney, whose duty it was under 18 U.S.C. §4244 to be alert for such deficiencies, some screening procedure is needed when it becomes apparent to the court that the criminal defendant will be tried without the assistance of counsel. This being for the protection of the defendant's rights, and the protection of the court system in terms of time and financial expense.

From an examination of the record alone, and without the benefit of observing the defendant's demeanor, it is apparent that the petitioner's diagnosis accurately describes his behavior at the trial.

The trial Judge went so far as to repeatedly state to the petitioner that his communications were "unintelligible" (TR 34, 40), his reasoning was "nonsense" (TR 75), and "gibberish" (TR 35, 38), his ideas "misguided" (TR 36) and that he was acting like

a "fool" (TR 37). Yet despite this he failed to invoke the terms of 18 U.S.C. §4244.

In its brief on appeal, the government argued, in part, that Webster was merely a "tax protester" who knew what he was doing and made his choice with eyes open and advancing commonly used arguments which have been repeatedly rejected by the courts. Assuming, arguendo, that Webster did know what he was doing, as the government contended, and that he was following some calculated plan in the footsteps of those "tax protesters" before him, then this gives additional support to petitioner's argument that the United States Attorney and the District Court should have requested a competency hearing under 18 U.S.C. §4244.

To knowingly use an argument that has repeatedly been rejected by the courts and to do so when the outcome spells almost certain imposition of fine and imprisonment is at best highly suspicious in terms of ones psychological integrity. The government,

itself, stated that Webster was well aware of the risk of his actions, but nonetheless pursued them. Although it is not unconceivable that such behavior might belong to one who is purposely civilly disobedient, it is all too likely that this same behavior is a manifestation of some genuine psychological disorder. Here the risk of unjustly punishing the incompetent outweighs the burden upon the government, and the court to employ some procedure which would screen out a person such as the petitioner.

Also in its brief on appeal, the government noted the remarkable similarity between petitioner's case and the numerous ill-fated tax protester cases to precede his. By this the government itself points out the need for the procedure we urge. The fact that these cases repeatedly arise despite their repeated rejection suggests that there is a class of people who may be in need of protection against their very own mental illnesses. Indeed, not

to employ some protection is to continue an injustice which can only be compared to the sending of sheep to the slaughter, or the shooting of fish in a barrel.

Litigating against a mentally deficient opponent in this way, the United States Attorney and the government cannot be too proud of their victories.

One procedure we presented in the Court of Appeals below, to screen for the mentally deficient defendant was to hold a special hearing on that very issue in which appointed counsel would be required, despite the defendant's objection. Prior to the hearing, the defendant would be examined by a person or persons qualified in the field of psychology and their opinion would be presented as evidence at the hearing. Should the defendant thereby be found free of a mental deficiency that would prevent his self representation, the court should, at that time, place the defendant on notice that to proceed further

in a self representative capacity, would thereby be deemed a waiver of his right to competent and effective counsel and his right to the claim of ineffective assistance of counsel on appeal.

The petitioner received no such procedure or notice.

Under 18 U.S.C.§4244, a hearing on the question of mental competency may be held although the psychiatric report does not indicate that accused is so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense. United States v. Barnes, 175 F. Supp. 60 (D.C. Calf, 1959).

Even though a trial court may exercise its discretion and conduct a hearing as to the accused's mental competency although the psychiatric report does not indicate the need for a hearing we submit that where the accused's constitutional rights may be jeopardized, discretion must give way to mandate.

Indeed, the record in the present case plainly demonstrates that despite the presence of a trained and competent United State Attorney, and an experienced and distinguished District Court Judge, there is under the present system an unacceptable and unnecessary danger that justice will not be done and that an accused's constitutional rights may be summarily dispensed with.

Only where there is a mandatory hearing with the mandatory assistance of counsel for the accused, can there be any reasonable assurance that the accused is, in fact, competent to stand trial, and that any waiver of the right to competent counsel is competent, knowingly and intelligently made. Also, during the course of such a hearing it may be disclosed that even though the accused is presently competent to stand trial, he should assert the defense of insanity as to those charges for which he will be tried.

The need to have assistance of counsel during a determination by special hearing of whether the right to assistance of competent

counsel is competently, knowingly, and intelligently waived, reaches the level of a constitutional right as is demonstrated by case law and traditional notions of justice and fundamental fairness.

In Powell v. Alabama, 287 U.S. 45, 68-69 (1940), addressing the extreme importance of the Sixth Amendment right to the assistance of counsel, the Supreme Court said:

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. . . He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.

This quote from Powell, also points out in the last sentence, the increased need for the assistance of counsel where the accused is "ignorant and illerate, or of feeble intellect".

In Gideon v. Wainwright, 372 U.S. 335,

344 (1963), the Supreme Court said:

> In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor or mentally incompetent man charged with crime has to face his accusers without a lawyer to assist him. (Emphasis added)

Powell and Gideon essentially argue that merely being indigent or poor automatically

triggers the appointment of counsel at government expense in order to assure the benefits and protection of the Sixth Amendment right to counsel. In fact, Powell's reasoning on this point includes even the "intelligent and educated layman" pointing out the increased need for the right to counsel where accused is ignorant and illerate or feeble minded. Gideon speaks directly to the mentally incompetent. This reasoning must logically be extrapolated to include those that are possible mentally incompetent to stand trial or represent themselves or not competent to make a knowing and intelligent waiver of the constitutional right to competent, effective assistance of counsel.

What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. Boykins v. Alabama, 395 U.S. 238 (1969).

The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver. Carnley v. Cochran, 369 U.S. 506 (1962).

In determining whether there is a competent, informed and intelligent waiver the judge before whom an accused appears without counsel is charged with a serious responsibility that can not be perfunctorily performed. McConnell v. United States, 375 F.2d 905 (1967).

The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused -- whose life or liberty is at stake -- is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. Johnson v. Zerbst, 304 U.S. 458 (1938).

As seen in the foregoing, there is a special duty placed upon the trial court

whenever an accused's life or liberty are at stake, which cannot be perfunctorily performed. However, without a mandatory hearing as described supra, there is too great a likelihood that this duty will not be performed at all or performed in a manner which provides the accused with far less protection than his constitutional rights require, as was the case of Webster.

In Spanbauer v. Burke, 374 F.2d 67 (1966), where the appellant contended that his waiver of counsel had been ineffectual because of certain claimed errors by the trial court, regarding the issue of waiver, and quoting Zerbst, supra, the opinion states:

> The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

Quoting from Von Moltke v. Gillies, 332 U.S. 708, 723-724 (1948), in which the Supreme Court set out the federal standards

for the duty of a trial judge in determining whether a waiver of counsel has been intelligent and competent, the Spanbauer opinion continues:

> To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered. (Emphasis added).

Von Moltke, supra, has been taken to require hearing or a searching inquiry by the trial judge, Coates v. United States, 106 U.S. App. D.C. 389, 273 F.2d 514, 516 (1959); or that the trial judge be convinced the defendant had "a broad understanding of the whole matter", United States v. Kniess, 264 F.2d 353, 356 (7th Cir. 1959); or that "the accused fully understands the charges against him and the possible adverse consequences of not having

counsel to represent him", Smith v. United States, 216 F.2d 724, 725 (5th Cir. 1954).

The government argued that the court went to great lengths to explain to defendant his rights and responsibilities and the potential consequences of his action. But in actuality, merely told Webster that the charges against him were "serious", that the penalities were "great" and his "liberty was at stake". (TR 21-22, 34-35). This was no substitute for the notice which should have been given. Although the court admonished Webster, it's admonishions were too vague, lacking the specificity to give him adequate notice and apprehension of his situation and its possible outcome. Indeed, at no time does the record indicate that Webster was aware of the range of allowable punishments, for the offense with which he was charged, nor was he aware of the possible defenses to his charges and circumstances in mitigation thereof.

In Spanbauer, the court affirmed the conviction of the District Court largely

because the appellant was granted a full evidentiary hearing on his habeas corpus petition and was there ably represented by counsel. In Spanbauer, appellant suffered from a mental defect, and in his dissenting opinion in Spanbauer, Judge Kiley stated:

> For purposes of this dissent, I will agree with the majority that the courts have not strictly applied the standards in Von Moltke v. Gillies, 332 U.S. 708, 724, 68 S.Ct. 316 (1948), but rather have focused upon particular facts concerning the defendant in each case to determine whether a waiver of counsel was voluntary and intelligent. There is still, nevertheless, a 'serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused.' Johnson v. Zerbst, 304 U.S. 458, 465, 58 S. Ct. 1-19 1023 (1938). Spanbauer's mental condition was an essential 'background' fact Johnson v. Zerbst, 304 U.S. at 464, 58 S.Ct. 1019, to be considered in the court's determination of whether he had a 'broad understanding of the whole matter'. Von Moltke v. Gillies, 332 U.S. at 724, 68 S.Ct. at 323.

Judge Kiley continues:

> I believe my view is confirmed by the psychiatric reports of the Wisconsin Department of Public Welfare, submitted to the state court before sentencing pursuant to the Sex Deviate

Law and received in evidence by the district court in the habeas corpus hearing. The final recommendations of two psychiatrists indicate . . . that Spanbauer was 'extremely disturbed' and a 'boy' with 'severely distorted' judgment . . . Spanbauer's mental condition at the time of his waiver of counsel, the totality of the circumstances while he was in custody and throughout the hearings, the inadequate inquiry at the preliminary hearing and the informal carryover of the waiver to the trial are the considerations justifying my conclusion that the waiver was invalid.

Judge Kiley's opinion goes on:

'There are many shades as well as degress of severity, and . . . the law . . . attaches different consequences to the presence of a particular mental disorder in a defendant at different stages of the trial process', id at 406, -- especially where the waiver of 'by far the most pervasive' constitutional right is concerned.

In United States v. Dujanovic, 486 F.2d 182 (9th Cir. 1973), revising for the appellant on the issue of competent and intelligent waiver of competent counsel, the opinion states:

The reasons for one charged with crime to waive the assistance of competent counsel in any given case range from the misguided or naive who just wants to tell the jury the truth, through the pressured one under the hardships of the accusa-

> tion of crime and the sophisticated person enamored with his own ability, to the crafty courtroom experienced one who ruthlessly plays for the breaks. All eventually play the part of the proverbial fool. Accordingly, reasons for the waiver are not the concern of the trial court. However, the American criminal jurisprudence is geared to the inviolate constitutional concept that an accused is entitled to competent counsel and legal representation, either of his own choice and arrangement or court appointed at government expense. So it is that the keystone determination or resolution of the two-pronged problem in the first instance is whether the request to waive the assistance of competent counsel is competently and intelligently made because with that determination the die is cast. Nothing whatsoever can thereafter occur during the pilotless journey which will evidence the state of mind of the accused or information at hand upon which he at that time intelligently waived his constitutional right of counsel.

The above quote describes four reasons for one charged with a crime to waive the assistance of competent counsel. We submit there is at least one other reason - mental deficiency or insanity.

The opinion continues:

> We see no rational distinction between the test for determining a competent and intelligent waiver of competent counsel and that for

> determining a competent, voluntary and intelligent waiver of any other constitutional right. Judicial experience with human frailties has long since taught the necessities of safeguarding the accused in criminal proceedings. See the historical notes to the 1966 amendment to Rule 11, Federal Rules of Criminal Procedure. We cannot visualize a less minimal requirement than the District Court shall not grant a request to waive counsel and proceed pro se without addressing the accused personally and determining on the record that the demand to waive counsel and proceed pro se is competently and intelligently made with understanding of the nature of the charge and the penalties involved.

The above quote states that the accused must understand the nature of the charge and the penalties. But in the present case, the record clearly shows that Webster did not understand the nature of the charges against him (TR 45, 47, 48, 51, 56, 71-73), and the penalties involved.

The court continues its opinion:

> We note that at no time during the waiver proceedings did the district judge personally advise the appellant of his constitutional right to have competent counsel or of the consequences of his choice of self-representation; nor does the record reveal that

> the appellant had any advice from any person as to, or any understanding of, the nature of the charges and the penalties involved, except only his acknowledgment to the Clerk that he had read the indictment. The record before us just does not reflect any rational factual basis to establish a competent and intelligent waiver of competent counsel by the appellant.

As previously noted in Argument I(a), supra, no where in the record can it be found that the district court informed Webster of his constitutional right to have competent counsel or of the consequences of not having the assistance of counsel - that is as previously noted, the possible finding for appeal purposes, that a waiver of the right to counsel may be treated as a waiver of the claim of ineffective counsel.

Such omissions by the trial court enhance the argument for a mandatory hearing where the accused must have appointed counsel and is given an express warning as to any waiver of the right to competent counsel.

In McConnell v. United States, 375 F.2d 905 (5th Cir, 1967) where the court reversed

the conviction and remanded based on the incongruity that there could be an intelligent and understanding waiver on the one hand, and continual requests for the appointment of counsel by the defendant, on the other hand.

This, we assert, was exactly the case concerning Webster which the record clearly demonstrates (TR 4, 5, 10, 13, 14, 22, Supp TR 7, 9, 10, 13).

Where, as discussed, supra, it has been pointed out that the trial court has a special duty in protecting such rights of the defendant, albiet in actuality it is a discretionary duty, and an unexcusable, impermissable denial of such rights still occurs as seen in McConnell, supra, and in the present case, the necessity of a mandatory hearing as described supra, is apparent.

Although it has been held by the Supreme Court, Faretta v. California, 422 U.S. 806 (1975), that there is a constitutional right to proceed without counsel when a defendant voluntarily and intelligently elects

to do so, the requirement that a defendant have appointed counsel for purposes of a special competency hearing on the issue of waiver of the right to competent counsel will not interfere with the right stated in Faretta. Once the hearing has determined that the defendant is competent to make a knowing and intelligent waiver of his right to counsel, he may proceed to act upon his right to self representation. But where the hearing discloses that the defendant is not competent, then the equally important corollary right to effective assistance of counsel becomes the right of necessity under the circumstances.

Again the petitioner contends that the procedures mentioned above would not unduly burden the courts but on the contrary would provide for a smoother dispensation of justice resulting in greater protection for the defendant and a savings of time and money to the tax payers.

A step in this direction, taken by this Court would significantly improve the admini-

stration of justice in all in pro per cases.

In certain cases such as the present case, in which the information requested in the financial affidavit touches the merits of the charges against the accused, the requirement that the information be disclosed before the accused may receive government appointed counsel, is a violation of the fundamental fairness doctrine of the Fifth Amendment, and causes a chilling effect in choosing to exercise the Sixth Amendment right to the assistance of counsel.

It is improper to condition the receiving of one constitutional right upon the relinquishment of another, that is, in order to receive his right of counsel, Webster was required to give up his privilege against self incrimination. Stevens v. Marks, 383 U.S. 234 (1966); McNob v. United States, 318 U.S. 332 (1943); Estes v. Texas 381 U.S. 532 (1965).

The disclosure of such information should at least be accompanied by the court's assurances that such affidavit would be viewed in camera. See United States v. Anderson, 567 F.2d 869 (8th Cir. 1977). The court's offer in the present case, to subject defendant to an oath concerning his financial ability in the presence of the United States Attorney was not a lesser of two evils. Also, contrary to the government's position, the question was not rendered moot by Webster's eventual compliance where his only choices were to either comply with an unconstitutional requirement or proceed without counsel. He was also prejudiced in that the court found him ineligible for appointed counsel based solely on his financial ability without regard to other considerations such as his emotional and psychological abilities. Also, Webster was, in effect, forced to indulge in the use of terminology on the affidavit which he objected to based upon his good faith belief that such

indulgence would threaten his position that he operated under some Pre-Norman, Saxon custom.

That, Webster, in his objections stated his reason as being a fear of perjury should not deprive him of his claim concerning the issue of self incrimination. To hold him to such a technicality would be too harsh.

That the government contends that it did not use the information provided in the affidavit in any way does not correct the wrong that we have addressed above. The fact remains that the government was not denied access to this information which it had no right to obtain.

CONCLUSION

Petitioner believes that this case involves timely and substantial questions of great public importance and further, that the decision of the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Eastern District of Michigan, Southern Division, should be reversed for the reasons already stated herein.

Respectfully submitted,

Barry L. Moon
Attorney for Petitioner
14292 Fenton Road
Fenton, Michigan 48430
Telephone: 313-629-8801

APPENDIX A

ORDER IN COURT OF APPEALS

No. 81-1492

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee	:	
vs	:	ORDER
JOSEPH J. WEBSTER, Defendant-Appellant	:	

Before: KEITH, Circuit Judge, MERRITT, Circuit Judge; and JONES, Circuit Judge

This cause having come on to be heard upon the record, the briefs and the oral argument of the parties, and upon due consideration thereof,

It is ORDERED that the judgment of the district court be, and it hereby is affirmed upon the opinion of the district court.

ENTERED BY ORDER OF THE COURT

/s/
John P. Hehman, Clerk

APPENDIX B

JUDGMENT OF DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff NO. 81-50012

vs

JOSEPH JAMES WEBSTER

Defendant

* *

JUDGMENT AND PROBATION/COMMITTMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date 07/14/81 without counsel, however the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

Defendant plead not guilty.

There being a verdict of guilty.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offenses of Failure to File Tax Return in

violation of 26 USC 7203 and False Withholding Exemption Certificate in violation of 26 USC 7205.

As to Count I: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year under the provisions of Title 18, United States Code, Section 4205(f) with no parole and fined the sum of two thousand dollars ($2,000.00).

The defendant is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law.

As to Count II: It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of one (1) year under the

provisions of Title 18, United States Code, Section 4205(f) with no parole and is fined the sum of five hundred dollars ($500.00).

The defendant is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law.

The sentence under Count II is hereby ordered to run consecutively to the sentence imposed under Count I.

As to Count III: It is adjudged that the imposition of sentence is hereby suspended and the defendant is placed on probation for a period of five (5) years to commence upon his release from confinement under the sentence imposed under Count II and upon the following terms and conditions:

1. The defendant is to file timely and legal Federal, State and local income tax returns as required by law and provide proof of same to the Probation Department.

2. The defendant is not to change his withholding exemption certificates with his employer without first obtaining written permission from the Probation Department.

3. Defendant is to submit all financial records to the Probation Department as requested.

The sentence imposed under Court III is hereby ordered to be served consecutive to the sentence imposed under Count II.

As to Counts IV and V: It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of one (1) year under the provisions of 4205(f) with no parole to be served concurrently with each other and also concurrently with Count I.

Upon designation of the institution to which defendant is assigned the Court will enter an Order giving defendant a date on which to report directly to said institution. Bond is continued until surrender of defendant to said institution.

Defendant is hereby given seven (7) days in which to file a Stay Pending Appeal.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on reverse side of this judgment be imposed. The Court may change the conditions of proba-

tion, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Signed by U.S. District Judge

/s/ Stewart A. Newblatt

Date 7/15/81

Certified as a true copy on 7/15/81

By: /s/ Deputy

APPENDIX C

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS AND FEDERAL RULES

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

TITLE 18 USC § 4244

Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offence against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial

shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

APPENDIX D

Supplemental Transcript, pages 7, 9, 10, 13:

THE COURT: Now, with regard to that, any other information you want to provide?

THE DEF: Still owe dental bills of $200.

THE COURT: Are you of the impression, Mr. Webster, that you can divest yourself of your property and then become entitled to an attorney?

THE DEF: No

THE COURT: What is it that you propose to do with regard to an attorney since I found before and still find that you are not indigent?

THE DEF: I am under a considerable amount of emotional strain right now.

THE COURT: Perfectly understandable.

(Mr. Donald B. Shier and Mr. Donald Bremer entered chambers)

THE DEF: I feel that I need the assistance of counsel.

THE COURT: I felt you needed the assistanct of counsel right from the very first

time I told you. The problem is, Mr. Webster, that you don't qualify under the law, and as you rejected my beseeching that you enter into an agreement, pay an attorney on terms, and I . . .

* *

THE COURT: . . .So I have no idea. All I do know is that I would confirm my previous finding. And not only do I confirm my previous finding, but I find that the asset that you transferred, the fact that it may be quit-claimed to your wife, does not enlarge your eligibility for appointment of counsel. You can't give away assets and come to the Court and say "I am now indigent."

THE DEF: That wasn't the purpose.

THE COURT: It was there to give a security, wasn't it, because of what may happen to your involvement in this case?

THE DEF: That's only partially true.

THE COURT: What other? She felt she needed security because you were facing this problem. And, of course, in the process of it you quit-claimed your interest in that house to give her that security.

In the meantime, you now come before the Court and say "I don't have the house anymore; I gave it to my wife. Now I am indigent". It doesn't wash.

THE DEF: That's not why I approached the Court. I approached the Court was because I wanted to get counsel through the Court.

THE COURT: I want you to have counsel. Only justification for being here is try and get you a fair trial, if you will let me.

THE DEF: I -- I wanted to approach the Court, see about getting counsel through the Court and what the terms of agreement of reimbursing the Court.

THE COURT: Two things. Mr. Bremer's here available. You can make a private agreement between he and you, if you want to. Obviously, you don't have to engage Mr. Bremer as a private counsel if you don't want to. But you have two choices. You can take a few minutes and talk to Mr. Bremer, see if you can privately engage him under some kind of an agreement that will satisfy him financially; the other choice is to talk to Mr. Shier and see whether or not you can work out an agreement so Mr. Shier can report to the Court and hopefully --

MR. BREMER: Your Honor, the problem I have with that, if I were to take a client on as a private client I cannot agree to serve as merely a standby attorney. In other words, I would not feel right about charging someone an attorney fee

and be a standby counsel: you look up law for him or just to be there, or what have you, or just to sit in court, if I were appointed in that capacity?

THE COURT: Why not?

MR. BREMER: Why not? I think it is a different situation if I were appointed in that capacity. . .

* *

(A short recess was taken)

THE COURT: Mr. Webster has had a private conversation with Mr. Bremer and then reported back to us that both Mr. Bremer and Mr. Webster state -- indicate that they are unable to reach an agreement for private retention. And then I asked Mr. Webster if he wanted to confer further with Mr. Shier and he left and conferred with Mr. Shier. Mr. Shier, do you have a position?

MR. SHIER: Well, I feel all this is occurring after the fact, and I guess there's

no way to solve that problem. But Mr. Webster indicated that he may have an interest just getting an attorney to consult with for jury instructions.

I asked him, you know, why Mr. Bremer couldn't serve in this capacity. Apparently, they didn't discuss retention for that purpose.

THE COURT: Again, he still wants to present his own defense; he just wants to have a lawyer help him, possibly?

MR. SHIER: Yes, possibly to consult with outside the criminal file. Part of my job responsibility is to . . .

* *

TR 4-14

THE COURT: . . . are not afraid to say what you want to say, and I am not afraid to say what I want to say.

I want to know, pure and simple, why you claim that you cannot -- you claim whether you cannot afford to hire an attorney.

THE DEF: I --

THE COURT: You do claim that you cannot afford to hire an attorney?

THE DEF: For the most part.

THE COURT: I don't understand that "for the most part."

THE DEF: I don't have liquid funds.

THE COURT: You mean you do have assets, you do not have cash; is that what you are saying?

THE DEF: Basically.

THE COURT: Is there something, another part of it?

THE DEF: No, that's it.

THE COURT: All right. And you want the services of an attorney?

THE DEF: In as an assistant but not to represent me.

THE COURT: I understand that. You want to run your own show?

THE DEF: Yes.

THE COURT: Okay. My question is, do you want the services of an attorney?

THE DEF: Yes.

THE COURT: Okay. If you want the services of an attorney, then I will have you go to Mr. Don Shier of Pre-Trial Services and fill out the necessary affidavit which will go into what your assets and what your liabilities are. And if you qualify for the appointment of counsel, then I would appoint counsel for you. That counsel will work in accordance as stand-by counsel or advisory counsel. You have a constitutional right to represent yourself, and you will have a right to have an attorney, and you can go part-way in between. I don't care how you do it. My question is very simple; do you want the services of an attorney? And if so, you will be required to fill out the necessary financial affidavit under the Criminal Justice Act so I can make a legal determination as to whether or not you qualify for the

appointment of an attorney at public expense.

If you qualify for appointment of an attorney at public expense, I will appoint one for you. That attorney will act for you in the manner in which you desire to act, subject to the rules of the profession and rules of the court.

Whether you have an attorney or whether you don't have an attorney you will be required to comply with all the rules of the court in these proceedings at this point and all points.

Do you understand that?

THE DEF: I understand.

THE COURT: Do you want to do that?

THE DEF: I got a question.

THE COURT: All right.

THE DEF: Would an affidavit of poverty be sufficient?

THE COURT: No sir, We have a Pre-trial Service. And generally here we have a special

officer that is assigned to make those determinations and take those affidavits and explain and explain your rights to you with regard to it. The Pretrial Service Office, Mr. Shier, he is available now. If you want to confer with him and fill out that affidavit, then I will recess this matter, let you fill out that affidavit and have Mr. Shier come back and I will examine the affidavit and determine whether or not you qualify.

If you qualify, I will continue the appointment. If you do not qualify, I have no power or right to designate an attorney to act for you in any capacity at public funds. It's that simple.

Do you want me to -- do you want to go see Mr. Shier and fill out that affidavit?

THE DEF: I'd like to review the affidavit before I attach my signature to it.

THE COURT: Of course. I would not expect you to sign anything without understanding it. That goes without saying. If you are under the impression that you are being asked to sign anything without knowing or do anything without knowing the significance please dispel that. There is no desire to have you sign anything that will have you give up any right you want to give up.

THE DEF: What I feel, I might purjure myself with respect to certain questions.

THE COURT: I can't advise you on that. If you sign an affidavit you are obligated of course, to tell the truth. If you do not tell the truth, of course, you may be subject to appropriate legal sanctions for not telling the truth.

THE DEF: I understand that. The question -- let me rephrase it. If I am willing to sign it but there's certain questions that I

feel I might perjure myself, I refuse to answer that question, how would that be treated?

THE COURT: I don't know what you are talking about.

Mr. Bennett Engelman's present here. He is in a very strange position, because he is not sure yet whether you qualify for appointed counsel. Mr. Engelman, while he is here, will advise you with regard to filling out of that affidavit, along with Mr. Shier. More, I cannot tell you. If that's what you want to do, proceed in that fashion, Mr. Engelman will take you to Mr. Shier. You can look at the affidavit, discuss it with Mr. Shier and determine if you want to sign it.

Then, when it is returned here, I will determine whether you qualify for counsel. If so, I will appoint counsel. If not, I will not appoint

counsel.

Any questions?

THE DEF: No.

THE COURT: Okay. We'll take a recess at this time and ask that you take Mr. Webster up to Mr. Shier.

(A recess was taken)

(The Court reconvened in chambers with counsel, the Law Clerks, the Defendant and Mr. Shier)

Mr. Webster, you have now returned with your counsel and Mr. Shier's now present.

And I take it you do not intend to complete the affidavit.

THE DEF: That's correct.

THE COURT: And why is it you do not intend to complete the affidavit?

THE DEF: I feel uncomfortable with the wording. I don't wish to waive my right to assistance of counsel based strictly on a refusal to fill out an affidavit that I feel uncomfortable filling out.

THE COURT: You have to establish that you are indigent in accordance with law. Now there is only one other alternative I know; that is, I will put you under oath and I will ask you questions concerning your financial ability to hire an attorney.
You can either fill out the affidavit or you can subject yourself to the oak and the questions that I ask you concerning the financial ability.
You have to qualify. Otherwise, you don't get appointment of a lawyer. The only way you qualify is to establish, according to the rules, that you financially unable to employ the services of an attorney. It's that simple.
So you can do one of two things. You can either fill out the affidavit or you can go under oath and answer my questions with regard to your financial ability to hire an

attorney.

THE DEF: I don't wish to take any oath, because I don't wish to volunteer judicial control of these proceedings

THE COURT: I don't understand that. You are presently under an indictment. Until that indictment is dismissed, the proceedings will proceed according to rule.

If you have appointed counsel, they can advise you as to how you can avoid or assert your claim that the court has no jurisdiction. Appointing counsel does not confer jurisdiction on the court.

You have every right to contest anything that you want to contest. Right now we're dealing with only one question. You have been indicted. And the question is whether or not you want the assistance of counsel. That's the only question.

THE DEF: That's what I am saying, Yes, I do wish assistance of counsel.

THE COURT: Yes. And you have to qualify under the law to have the assistance of counsel, and that qualification has to do with finances.

And you can have two choices, as I say, you can either fill out the affidavit of Mr. Shier or you can answer the questions under oath that I ask you concerning your financial ability to hire an attorney of your own.

THE DEF: Neither one of those is a viable alternative, with respect to my person

THE COURT: You will have to explain to me why, Mr. Webster.

THE DEF: Well, if I can take an oath, then I am subjecting myself to the judicial control.

THE COURT: No, you are not. You are subjecting yourself to having an attorney appointed for you who can assist you in challenging the court to act.

THE DEF: (No response).

THE COURT: If you want to challenge the right

of the court to proceed with you, you have every right to do so. We're making a record of it, with the reporter, including my remarks. If you want to challenge the jurisdiction or power of this court to act with reference to you, you may do so. You may do so, with or without a lawyer. If you want a court-appointed lawyer to help you challenge the court's power to act in this matter, then you have to qualify for that appointment of counsel. And that's what this matter is for today, to determine whether you qualify for appointment of counsel. Very simple, if you do not consent to the jurisdiction of the court, you do not consent to the power of the court to deal with you. If you want to talk to Mr. Engelman about that privately, you may step out and confer with him.

You may do anything you wish, but you have to do something. You are not entitled to counsel until you qualify for counsel. The public doesn't pick up the tab for your counsel until you qualify for it.

THE DEF: I'd like to dhallenge jurisdiction right at this time.

THE COURT: You can do anything that you like. What is it you'd like to do?

THE DEF: Challenge jurisdiction.

THE COURT: On what basis?

THE DEF: Lack of jurisdiction.

THE COURT: You have to file a motion. You will have to show me some law that shows this court has no jurisdiction. You may do that at any time.

THE DEF: Well, grounds are a matter of fact.

THE COURT: You still have to allege what your grounds are. You have to comply with the rules. You have to file a motion. You have to attach an affidavit if there are factual

matters so the government has a chance to respond and answer and then we deal with it under those circumstances. No one-sided deal. The government doesn't get a one-sided deal here and you don't either. Whatever you claim, you have to file and give them notice, and opportunity to respond. And that's the way the game is played.

THE DEF: I understand that much.

THE COURT: So you can do anything you want.

In the meantime, this matter is here at this point for you to determine whether or not you are going to answer the questions concerning your financial ability to

engage the services of an attorney.

MR. ENGELMAN: Your Honor, if I may inject. I believe he has two other alternatives, one is to hire his own counsel and one is to waive counsel.

THE COURT: He can do any of those things he wishes. However, I am pointing out what the choices are, if he wants the court to appoint counsel at public expense. If he claims that he is financially unable to employ counsel, then there's only two methods by which he is going to get counsel appointed; either by filling out the affidavit with Mr. Shier or by answering my questions.

THE DEF: I just like to state that to assert -- I'd like to assert

that I am not waiving my right to counsel, but I have got nothing further to say.

THE COURT: I think that we'll set this matter for a jury trial. When will you be ready to go to trial?

THE DEF: Not for some time.

THE COURT: What does that mean?

THE DEF: Well, I'd like to get -- I'd like to bring forth factual challenge to the jurisdiction.

THE COURT: No problem. You may do that at any opportunity. My question is, when will you be ready to go to trial?

There's nothing prohibiting you from bringing any motion, filing any matter, doing anything appropriate under the rules of law. You can do anything. Nothing stops you. I am

obligated to set this matter for trial within 70 days of the original arraignment.

THE DEF: May I have the maximum amount?

THE COURT: Why?

THE DEF: Time allowed to grant me sufficient time in which to defend myself.

THE COURT: We'll leave at this moment and ask -- as a matter of fact, we'll ask the courtroom deputy clerk what days she has available for trial.

* *

TR 21, 22

THE COURT: The only thing I can tell you Mr. Webster, is that you can proceed in the manner which you are proceeding in and you will end up proceeding alone, or you can consult a lawyer, engage the services of an

attorney in any way that you want, or you can apply to the court for the appointment of counsel and qualify for appointment. You have to take those choices and you have to live with the consequences of those choices.

THE DEF: I understand.

THE COURT: I would urge you to get a lawyer, but I certainly would not make you and won't make you. I have no power to make you. But operating or electing to proceed without a lawyer gives you no benefit to anything anybody else doesn't get.

THE DEF: I understand.

THE COURT: These are very serious charges, Mr. Webster, and I don't know how to convince you that nobody ought to be entering the courtroom who is not an expert in the courtroom. That's my gratuitous advice to you. The charges are serious, the penalties are great, and I don't know how

to talk to anybody any straighter then I am talking to you.

THE DEF: Uh-huh.

THE COURT: If you opt to proceed in the manner that you are proceeding which you have every right to do, you should seriously consider as to whether or not that's a mistake and what jeopardy you may be put in. You want to think about it, that's fine.

THE DEF: That's why I would like assistance of counsel.

THE COURT: Well, you can't go both ways and --

THE DEF: I understand.

THE COURT: -- if you consult with counsel as to what you want to say and what your problems are, we have afforded you Mr. Engelman you could talk with. You want to talk about affidavits, we have afforded you Mr. Engelman to consult with, with regard to the questions I would ask regarding your financial ability. You may

have consulted with him, you may not have consulted with him. Very shortly Mr. Engelman is going to be relieved, because you do not qualify for appointment of counsel and refuse to qualify for appointment of counsel.

If you want to step out, talk privately, you are free to do so.

THE DEF: I got a question in regards to the financial form. I don't wish to perjure myself and I don't -- I feel uncomfortable with the questions. I would like to qualify but I just don't feel comfortable answering all the questions.

* *

TR 33-40

MR. GOLDMAN:. . . This notice entitled Notice to the Court Regarding Impeachment of Grand Jury Proceedings, Notice to the Court Regarding Impeachment of the Grand Jurors, Notice to the Court Regarding Motion Practice by

Accused, Notice to the Court Regarding Voir Dire Inquiry of Juror Qualifications, Notice to the Court Regarding Lack of Jurisdiction, and an Affidavit by Mr. Webster

THE COURT: Mr. Webster, did you file those notices in the clerk's office?

THE DEF: Yes.

THE COURT: Did you file them in duplicate?

THE DEF: Yes. There is a copy on file for you.

THE COURT: Mr. Webster, what do you perceive your purpose in being here is? What would you like to be dealt with on this occasion, Mr. Webster?

THE DEF: I set several -- first of all, my disadvantage. I am at counsel table. I should be where accused should be sitting.

THE COURT: You are at the right position.

THE DEF: I am not competent to represent myself.

THE COURT: Well, you are still at the right position.

You may not be competent, sir, but

we have dealt with this before. I want to tell you as directly as I can. You cannot be in more serious difficulty than you are. And why you persist in seeking to represent yourself, and why you persist in filing these papers, which are unintelligible, I don't know. As a human being, I feel an obligation to tell you that you are in serious, deep trouble. And why you won't consult with a professional in the area, I don't know. But I don't know hom to communicate with you to you, and I don't know how to make you understand that your liberty is at stake, and this is about the last time I feel I am going to. I have done this on several occasions. And you are -- the charges against you are serious, and you keep presenting what I consider, up to the present time, to be unintelligible matters and it

falls on deaf ears.

And I am not your enemy. The only person -- my only function here is to make sure you have a fair trial, that's my only purpose here, you and the government, and you still persist. I don't know what to do about it. But you have a right, under the constitution, to represent yourself. You also have a right to have an attorney appointed for you, provided you are will (sic) to undertake an agreement to repay the government for any money the government is required to pay to an attorney to represent you?

Do you understand the last statement I just made to you?

THE DEF: I understand that.

THE COURT: Are you willing to undertake such an agreement?

THE DEF: I don't wish to place myself into a servitude position.

THE COURT: You keep coming up with that nonsense, and I can't tell you any more directly that you are talking nonsense. You may be reading the law day and night, but you are talking gibberish and I don't know how to get that through to you. This is gibberish and I don't understand it, the government doesn't understand it, and I have told you before it's gibberish. It is unintelligible. It is nonsense. And you are going to end up in trial, in front of a jury, and possibly convicted without having had an opportunity to providing the best defense the law allows and I don't know what to tell you.

I don't know how to get through to you, and I want the record to reflect that I am frustrated because you still talk gibberish.

You want to persist in it. But I don't know what I can say to you,

other than what I have just said. You are going to find yourself on a road down to serious trouble that will affect you and your family for the rest of your life. And you are, as a result of some misguided idea, presenting gibberish to me. There is no basis in the law for the nonsense that you have filed. I have read it. I have considered it. It is sheer nonsense. You can live with it, if you want to. But don't you understand what's going to happen to you.

THE DEF: Yes, I believe so.

THE COURT: Why don't you do something about it?

THE DEF: I think the affidavits have the facts that I filed, if the Court would review that.

THE COURT: I am reviewing what's in the file, except that which is filed today, and I will review that as soon as this hearing is over.

Mr. Bremer available?

Are you willing, Mr. Webster, to sign an agreement to repay the government any funds the government pays out to an attorney appointed to act for you?

THE DEF: No, I'm not.

THE COURT: Why aren't you? That's the only basis I can provide an attorney for you. I mean, what I'd like to do is come down and say to you, side-by-side, that you are acting like a fool. I don't know how to say it any more directly.

I am almost begging you to get an attorney before you get yourself in so deep you can't get out. And I don't know why. Neither you nor anybody else is entitled to a free ride. If the government pays an attorney on your behalf, you have to obligate yourself to repay the government.

THE DEF: I don't quite understand, if I had the right to assistance of counsel.

THE COURT: You do not have the right to assistance of counsel at government expense, unless under the circumstances of this case you are willing to undertake to enter into an agreement with the government to repay. You are working. You own a home. You have assets. You have income. I don't care what you call it, income or whatever you want to call it, you have daily wages, according to the affidavit that you have signed. And under those circumstances, sir, you have to undertake to repay the government, in the event the government has to pay an attorney. And I don't know what to do, other than to tell you I am doing everything but begging you to get an attorney. I am doing everything but telling you that if you enter into an agreement to sign to repay the government, I will

appoint an attorney for you who can advise you and participate, to the extent that you allow, and when I tell you that, you tell me you are not willing to do so.

THE DEF: I don't know what -- I haven't seen any agreement to what money should be --

THE COURT: Are you willing to enter into an agreement with the government to repay the money that the government pays out to hire an attorney for you at the rate of $30 an hour in court and $20 an hour for out-of-court work? That's what the charge is the attorney will make to the government under the Criminal Justice Act, whatever the government is obligated to pay, under those circumstances, you have to enter into an agreement to repay.

I couldn't be more direct with you, if you were my own son. Man, don't

you understand you are in trouble?

THE DEF: I don't understand that.

THE COURT: You are not going to do anything about it, except to continue to file this gibberish?

THE DEF: I don't believe the facts are gibberish.

THE COURT: Fine. You are saying you do not want to sign an agreement to repay the government?

THE DEF: No.

THE COURT: You are not saying that or you are saying it?

THE DEF: I am saying that I don't wish to indebt myself to the government.

THE COURT: Very well. The following will be the ruling of the Court:

Document Number 12, Filed April 7, 1981, entitled Notice to the Court Regarding Matters Prior to and Inclusive of Pretrial Conference, whatever is sought by way of relief is denied.

With regard to the affidavit filed April 9, 1981, insufficient to satisfy the requirements for appointment of counsel. Indeed, an examination of the latter affidavit indicates the paragraph 7 which provides that you own -- Quote ". . . Nothing in may possession with which to make payment of my debts at law. . ." unquote, may in all likelihood be false. Document Number 13, which is dated April 9, 1981, entitled Notice to the Court Regarding Continued Appointment of Counsel in an Advisory Capacity, unquote, I find that to be unacceptable both as to content and relief sought thereby. Whatever is sought thereby is denied.

The document filed April 23, 1981, an affidavit under the Criminal Justice Act, I have already advised you that if you agree in writing to

make payments towards attorney fees, I would appoint Mr. Bremer. You have failed to do so.

Docket entry number 18, April 23, 1981, the Government's Motion for Discovery number Rule 16(b) and (1)(a) and 16(d)(2), that motion is granted. The response to the government's motion is denied as unmeritorious.

Docket entry number 20.

Docket entry 19, April 27, 1981, entitled, quote, Notice to the Court Regarding Impeachment of Indictment unquote, that, whatever relief is sought thereby, is denied. I find that to be unintelligible and without merit.

Docket Entry number 23, April 29, 1981, Motion to Strike Defendant's quote, Notice to the Court, unquote is granted.

Docket Entry number 24, the government's Motion for Order Directing

Pretrial Production of Subpoeaned Documents is granted.

That concludes the matters for today and we will proceed to trial on the date previously set.

I will read the documents just filed today and will determine whether or not they have any merit and whether or not they warrant any further determination by the Court.

That concludes the hearing.

* *

TR 44-54

THE COURT: This is Docket Number 81-50012, entitled United States of America vs. Joseph J. Webster.

The Court set this matter for a hearing for two purposes: One is to deal with a document filed May 12, 1981, by the Defendant in clarification of Notice to the Court Regarding Impeachment of Indictment, and the defendant concludes the document by stating, quote, "

"Wherefor the accused demands special hearing on the matter and also demands dismissal of the Indictment as being defective." This is your special hearing, Mr. Webster.

THE DEF: I'd like to start of, I have got a notice to the court regarding some law. In fact, if I may approach the bench --

THE COURT: Sure. If you will give me a moment to glance through these. I have had a chance to examine them, at least to identify what they are. One matter reads: "For lack of full factual basis for one Indictment is charged that having incurred tax liability with no factual statement as to how such a liability is incurred other by inference. I am ignorant to the fact how one incurs a liability for the tax, yet the Indictment doesn't reveal it.

By way of an analogy, further, that what I do know is that a corporation partakes of a privilege that's basically a franchise granted by the State.

THE COURT: Let me interrupt you at this time to ask you if you would stay on your first point; and that is, your cliem that the Indictment is defective because it does not sufficiently advise the facts.

THE DEF: That's correct.

THE COURT: I'd like -- have you completed on that point?

THE DEF: Well, not exactly.

THE COURT: Well, I'd like you to stay on that point until you have completed it and before we go on to another point.

THE DEF: Well, as I said, the Indictment doesn't -- just states that -- charges me as incurring a liability. It doesn't say how that liability is incurred. I think it should so

state.

I am trying to think of an analogy to -- to help clarify my line of reasoning, in this respect.

I do know that a corporation incurs a liability for taxation. The reason that they concur a liability for taxation is that they have made use of a franchise granted by the state; includes corporate -- quasi-corporate privileges.

THE COURT: Well, you are moving on to some other point. I'd like you to tell me what is deficient about the indictment. The indictment in Count I says that you earned $21,571.30 in the year 1977. It's plan, specific and to the point. You are not, as I see it, entitled under the law to any more information with regard to the amount of income you are charged with having made during that year. And it specifically charges you with wilfully and know-

ingly failed to pay income tax return for that year.

THE DEF: Well, in making a return I should think that I had to first receive something of value from the government.

THE COURT: So you are back on the old argument that the exchange of labor for money is not income.

THE DEF: I haven't exactly said that.

THE COURT: Tell me what it is, then. And please talk about yourself, not about corporations, if you don't mind.

THE DEF: Well, it's because I understand corporations.

THE COURT: I know, but you may understand rockets to the moon, it's got nothing to do with this case.

THE DEF: They make a return for another purpose.

THE COURT: We're talking about you, sir, and we're talking about the Indictment against you. I have given you

this hearing so I can understand what your complaint is and what your allegation about the indictment being defective is. And I think you should talk about this indictment and what it does with regard to charging you.

THE DEF: Okay. In respect to me, I am still ignorant of what I have received from the Government that I should have to make a return.

THE COURT: Okay. That's your objection. You say you have not received anything from the Government, therefore you are not obligated to make a return; is that it?

THE DEF: I am ignorant of that fact.

THE COURT: What else about the indictment do you want to claim is defective?

THE DEF: Basically stated in the affidavit.

THE COURT: Well, I don't understand that. And you have asked for a special hearing so you can make sure that you could communicate your complaint about

the indictment. So now we have had the special hearing and you are referring me to the file. I don't understand.

What did you ask for this special hearing for?

THE DEF: For me to adequately defend myself, I have to know the specific charges. I thought I understood what the charges were, because I examined them further and --

THE COURT: Well, the test of the legal sufficiency of an Indictment is not whether you understand it. The question is, whether or not a person is properly advised by the terms of it. If you choose not to understand it, it is not a defective indictment.

THE DEF: It's the fact -- the fact of what it is that I am to return the --

THE COURT: I told you that.

THE DEF: How did I incur a liability? How is that liability incurred obliga-

ting me to make a return?

THE COURT: They said because you had a gross income of $21,571.30. They said that that was your gross income and that obligated you to make a return. That's the charge. Whether they can support it or not, we'll have to wait for the trial, with regard to Count I.

There are similar charges with regard to other Counts, including filing of false withholding exemption certificate, failure to file a tax return for '78, failure to file a tax return for '79, false whthholding exemption for '79.

Is there anything else with regard to the claimed defects of the indictment?

THE DEF: What I am trying to get at is this term "income". Is that a measure? Is that the yardstick, that measurement of a privilege or benefit it's based upon?

THE COURT: The Internal Revenue Code establishes the definition of income. The Internal Revenue Code indicates what the requirements are for filing and for reporting and for paying. Does that complete your presentation with regard to your claim that the indictment is defective?

THE DEF: No, it doesn't.

THE COURT: I'm waiting to hear the rest.

THE DEF: I need a little bit more time to regain my composure.

THE COURT: Okay.

THE DEF: I think I'm ready.

THE COURT: All right.

THE DEF: Basically, what I am trying to say is, that I operate under the ancient custom of Saxon and Pre-Norman England. That's the custom I operate under. I have nothing to do with this custom of merchants.

THE COURT: How about whether you operate under the provisions of the Internal Revenue

Code? Which is what we are dealing with.

THE DEF: Well, I don't know that that code applies to an individual who operates strictly under the custom -- the ancient custom of Saxon and pre-Norman England.

THE COURT: Well, I suppose I am here to tell you that you do not operate under it.

THE DEF: Then I am ignorant of operating under that.

THE COURT: I have no response to that.

THE DEF: I am totally --

THE COURT: You don't select the laws under which you operate. It is not a matter of your personal selection.

THE DEF: State substantive law guarantees my custom.

THE COURT: We're operating under the Federal Law.

THE DEF: I understand that's an adjective, law.

THE COURT: I don't understand that distinction but so far as I know you are bound

by it.

THE DEF: That's the point here. I don't understand how I could conceivably be bound by it, if the Indictment doesn't show how I incurred this liability. It just says that I did.

THE COURT: It says you did because you had income of $21,571.30, Count I, for the year 1977. It says how you incurred the liability, by having that kind of income.

Now, the government will be obligated on trial to show you had that kind of income. If they don't show it, then you may walk.

THE DEF: In essence, what they are saying, solely by reason of having income one incurs a liability?

THE COURT: I think that's the underlying implication of the Internal Revenue Code. I think you have got it now. I think you are right.

THE DEF: So it's always been my intent to trade property for property, sub-

stance for substance, on an even exchange.

THE COURT: We're not concerned about your intent in that regard. We're concerned about whether or not you wilfully failed to file an income tax return after you had $21,571.30 income for the year 1977. The question of intent that we will be concerned with on trial is whether you knowingly and wilfully failed to make that, file that income tax return.

THE DEF: I am trying to regain my composure again, please.

THE COURT: I am having this dialogue with you because I have told you before that I think you are operating under some illusions as to what the law is, and as distinguished from what you think it ought to be.

And because you are speaking in a language that is unknown to me with

regard to the applicable law, I don't want to miss any valid point that you may have, and that's why I granted you this hearing. So I think you should get to the point you want to make and explain as best you can what your point is; not your philosophy, what your point is with regard to the Indictment, what the legal insufficiency or defect in the Indictment is. As to your personal beliefs as to what the law is or ought to be, that's really a matter for you, not for me.

THE DEF: You think this matter might be postponed?

THE COURT: I don't see how it can be postponed. You go on trial, I believe, on the 26th of May. These matters have to be dealt with prior to trial for an orderly administration of the trial. That's why we set it up for today.

THE DEF: Could it be reset?

THE COURT: What are you talking? You want a half hour or so?

THE DEF: Yes.

THE COURT: All right. We can do that.

THE DEF: Can we go on to the next matter?

THE COURT: All right. What's the next matter?

THE DEF: I believe it was their matter.

THE COURT: You mean we'll have Mr. Goldman's matter and then come back to yours?

THE DEF: Then I'd like to recess for half-hour and then come back.

THE COURT: All right. All right. Any objection to that Mr. Goldman?

MR. GOLDMAN: I have no objection.

THE COURT: The next matter or the second matter is the motion in limine filed on behalf of the government, and bearing a filing stamp of May 12, 1981, wherein the government seeks for an order preventing the defendant from offering certain matters. You may proceed.

MR. GOLDMAN: Thank you, your Honor. The pleadings that were filed in this particular case during the course of this ligation and, also, the material or materials which Mr. Webster presented to me pursuant to your order concerning discvoery.

I would briefly like to go though the materials that were provided to me for discovery purposes and read them to the court.

Many of them are contained in the listing of source citations which were presented to the Court today in support of Mr. Webster's Notice for the Court regarding law and fact. But let me go through the material very briefly.

1. "Grooms legal Maxims".
2. A case called Moses vs. MacFerlan from 1760.
3. "The law of Bills, Notes . . .

. . . Congress, First Circuit 1909.

15. "Common Sense Dispatch of Merchants by William A. Hill, published by -- P. O. Box 313, 'Course of Conduct Particulars". There are other matters which were presented to me which I don't have any basic objection to, at this point. I would probably object to them at trial concerning relevance. If relevance could be shown, I wouldn't have any objection to them. However, your Honor, these materials are obviously all legal materials, and it's the court's duty in this particular case, as in all cases, to instruct on the law.

Mr. Webster's informed me that he intends to introduce these par-

ticular documents into evidence as exhibits to support his theories. In the brief which I wrote, I tried to condense Mr. Webster's theories as best I could understand them, and I must admit to the court that I really don't understand them thoroughly. Third, I brought this motion pursuant to Rule 103(c), Federal Rules of Evidence, which state that "In jury cases proceedings should be conducted, to the extent practicable, so as to prevent inadmissable evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the . . . .

* *

TR 63-65

THE DEF: . . . intends to introduce. I got a notice to that effect.

THE COURT: I am sorry. Would you repeat the question?

THE DEF: It is necessary for me to prove fraud on the part of the document the prosecution intends to introduce as evidence.

THE COURT: It is necessary for you to prove fraud?

THE DEF: I don't know where that statement comes from or what it means. I am not sure I can answer what you are saying or respond to it.

What I am saying is, that the evidence that was obtained from the subpoena duces tecum provided by financial institutions, that evidence is grounded in fraud.

THE COURT: I don't understand those terms, "grounded in fraud". Tell me what you are talking about.

THE DEF: I was defrauded.

THE COURT: I don't understand that. Tell me how you were defrauded.

THE DEF: There was no detrimental consideration on the part of the financial institution.

THE COURT: I still don't understand that. What no detrimental consideration on the part of the financial institution to do what? You are giving me phrases. I'd rather have facts.

THE DEF: Let's go back to one of my affidavits previously filed. The affidavit of May the 5th, line 14.

THE COURT: Your number 14. I don't understand your number. You are confusing me again.

THE DEF: Fine. It is line 14 on the affidavit. Affidavit of May the 5th.

THE COURT: I see an affidavit bearing a time stamp of the court's office of May 5.

THE DEF: Line 14 of that paragraph 14 verbatim "That governments through covin and concealment of material facts by various merchants including banks

and lending institutions, I was defrauded and deceived into bonding myself for no detrimental consideration.

THE COURT: I see the allegation. But what are the facts that you are talking about? What's your theory?

THE DEF: Well, the fact is that the banks only lent claim to title to property. They did not lend me any titles to property. There was no detrimental consideration. I was defrauded. I was further defrauded --

THE COURT: You'll have to go through that one more time. What is it? What did they do that you are complaining about? They lent you money?

THE DEF: No, they didn't.

THE COURT: Then what did they do?

THE DEF: They lent credit.

THE COURT: I see.

THE DEF: I was deceived. I was under the impression that they had lent me money.

But it wasn't money, it was credit. Credit's only acclaim on titles to property. It's not a title to property. There was no detrimental consideration on their part.

THE COURT: That's the claim that you have? The claim that you were defrauded?

THE DEF: That's right. That's part of it.

THE COURT: All right.

THE DEF: The other part was intent in entering into those agreements, I guess you would call them. That it was my intent to operate under -- into an agreement that guaranteed my custom, my ancient custom that is derived from the ancient custom of Saxon and Pre-Norman England.

THE COURT: We're already done with . . .

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TR 69-75

THE COURT: The motion in limine will be granted. You will not be permitted to enter any of those items that will be listed on the order or bring to

the attention of the jury any of those items without advising me in advance. And if you are asserting the same basis that you have asserted in prior filings and that you have asserted today, you need not bother because the ruling will not change. If you have additional grounds or basis for which you seek to offer those, you may do so. You may not repeat the grounds currently asserted or that have been asserted in the past. The motion has been granted. As I understand it, you want a half hour so you can gather your thoughts to tell me again any additional reasons why the indictment is defective; is that correct?

THE DEF: That's correct.

THE COURT: All right. It is now 10:13 or so. We'll come back at 10:45 and we'll hear the balance of your argument.

THE DEF: Fine.

(A recess was taken at 10:15 a.m.)

(The court reconvened at 10:45 a.m.)

THE COURT: We'll proceed now with docket number 81-50012.

THE DEF: Regarding impeachment of the indictment, I couldn't find anywhere on its face where I could -- where it stated a fact of what classification of facts it was. I couldn't tell if it was an excise tax, an imposed tax, direct tax on property.

THE COURT: Well, it doesn't say that. It tells you in the indictment that you are being charged, because it charges you with having certain income. It says you had a gross income of $21,571.30. Now, income is of a multiple variety under the Internal Revenue Code.

THE DEF: That's confusion for me. Name of the tax, they could put any number of names on it, I would maybe -- and I would still be confused.

THE COURT: This is obviously the only tax I know measured by gross income is income tax.

THE DEF: You stated that it was measured by -- the tax is measured by income. If that's the yardstick of the tax, the measure of the tax, what is the thing that is being taxed?

THE COURT: The income. The income, according to the Internal Revenue Code. Indictment clearly tells you that.

THE DEF: The measure of the tax is income?

THE COURT: As defined by the code.

THE DEF: The measure of the tax is income?

THE COURT: It's the item to which the tax rate is to be applied. Anything else?

THE DEF: Yes. I had a thought. That I haven't knowingly partaken of anything that's outside a matter of common right.

THE COURT: I won't know that until I hear the evidence. Then, of course, I am not sure how you will use the term, quote common right unquote. I don't

what that has to do with this case. The measure of your obligation is established by the Internal Revenue Code. No matter what words you use, the measure of this case is the Internal Revenue Code.

THE DEF: The measure of the taxes according to the income --

THE COURT: Let's go on to a point. I don't want to have you repeat. I am already affording you some time to try and explain things that had you had an attorney, you would have been able to explain or not pursue. So, I have other things to do, Mr. Webster. I wish you'd get to it. Get to what you have to say.

THE DEF: What I am trying to say is that the indictment only states the measurement of the tax.

THE COURT: Okay. I have heard that motion. Denied on that grounds. Next.

THE DEF: Indictment doesn't state the clas-

sification of the tax.

THE COURT: What does that mean?

THE DEF: It doesn't state that it's capitation tax to --

THE COURT: Motion denied on that grounds. Next.

THE DEF: It doesn't state that it's an excise tax.

THE COURT: Denied. Next.

THE DEF: It doesn't state that it's a duty tax.

THE COURT: Next. Denied.

THE DEF: It doesn't state that it's an impost tax.

THE COURT: Denied.

THE DEF: It doesn't state that it's a direct tax on property.

THE COURT: It doesn't state any of those things. The question is, whether or not it is defective. You have to point out the defective in the indictment. The motion's denied. Anything else?

THE DEF: The defective is that it says I knowingly. I don't even know the

fact what the tax is. How can there be any knowingly?

THE COURT: Motion's denied. Next.

THE DEF: I guess I am wasting time.

THE COURT: So far, from everything you have said so far that is correct. But for fear that you may have a point that you find it difficult to express, I have afforded you this special hearing. If you are going to continue to repeat that which you have already repeated, you are wasting time, mine and yours. Anything else?

THE DEF: I guess not.

THE COURT: The trial will start, as indicated before, promptly at 8:30.

THE DEF: I have a few questions regarding the trial.

THE COURT: I don't know if I will answer them, but I will hear them.

THE DEF: Okay. Regarding instructions to the jury, are those instructions forwarded to you first?

THE COURT: You provide them to the law clerk.

You file an original and one copy to the clerk's office and they will bring a copy to the law clerk.

THE DEF: Is there a cut off date on those instructions?

THE COURT: Yes. According to the rules, they are -- cut - off day is the begining of trial. And if something happens during trial, where you want to supplement it, I will consider at any time up to the time that I give the instructions.

THE DEF: That concludes the matter.

THE COURT: You have no other questions?

THE DEF: Not right now.

THE COURT: Okay. We'll be in recess.

(hearing concluded)

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TR 144

. . . at this time.

THE COURT: You may cross examine, Mr. Webster.

CROSS EXAMINATION-BY THE DEFENDANT

Q: In regard to previous exhibits concerning Mr. Webster, to your knowledge

did she have any taxable income for those years that a return was not filed?

A: I don't know.

Q: Is that true also of Mr. Webster?

A: That's also true of Mr. Webster, I don't know.

Q: You don't know if he had any taxable income?

A: I --

MR. GOLDMAN: Your Honor, I believe I will object. I believe the legal determination whether or not there is taxable income.

THE COURT: So the question is -- no, I will overrule the objection.

WITNESS: I would have to look at the exhibit again. In some of the years that we had exhibits for, I don't know if you said specific years, there were W-2's attached to the returns.

Q (By Def): You are talking re the returns that weren't considered. You are talking

the years prior to 1977?

* *

TR 157

exhibits through the questions and is not here for other purposes. Am I correct, Mr. Goldman?

MR GOLDMAN: That is correct, your Honor.

THE COURT: So that a great deal of the questions that you want to ask are probably better directed at future witnesses. That this witness is really a formal, technical witness to identify the documents. So in case you are fearful that you won't get a chance to ask the questions that you want to ask, you may very well be doing it with the wrong witness.

THE DEF: I would like to confer with opposing counsel at this time.

THE COURT: Go ahead.

MR GOLDMAN: Maybe this should be put on the record.

THE COURT: All right.

MR GOLDMAN: Mr. Webster inquired of me whether any of my witnesses are experts on what income is or what constitutes a valid tax return. I informed Mr. Webster that that's a matter of law that the Judge will instruct upon.

THE COURT: The expert's here. That's my responsibility to tell the jury what the law is . . . .

* *

TR 174

A: Yes, they are.

Q: Is it the regular practice of General Motors Corporation to maintain those records?

A: Yes, it is.

MR GOLDMAN: I will show them to Mr. Webster prior to offering them into evidence.

THE DEF: No questions.

THE COURT: All right. Have you offered those?

MR GOLDMAN: I am offering them at this time.

THE COURT: You are talking about 22, 24, and 26?

MR GOLDMAN: Yes.

THE COURT: Any objection?

THE DEF: No objection.

THE COURT: All right. Then 22, 24, and 26 are admitted.

Q: I would ask you to look at those W-2's and again inform the jury of what the gross income of Mr. Webster for 1977, 78 and 79 is, based upon those exhibits?

A: Gross income for --

THE DEF: Objection. Could he restate the question, please?

THE COURT: Would you do so?

* *

TR 191

. . . department. We get it from them.

Q: But is the policy of the corporation not to give legal advise regarding how to fill out that form?

A: Again, I don't have knowledge to testify to that. I am not aware of what the policy is.

Q: Does General Motors hire employees under the age of majority, say at age 17?

A: I do not believe so.

Q: With respect to these wage and tax statements, I would like you to review those and indicate to the jury if the word "income" appears anywhere on there.

A: Only in one area, Federal Income Tax withheld.

Q: Strictly in regarding to withholding, then?

A: That is correct.

Q: I notice there is a subtle difference, I don't know if it is significant or not, in regards to the state or local tax withheld between 1977, 1978, and 1979. At one point, it states "state or local tax withheld", at another point, it . . .

* *

TR 208-210

. . . I would like to set this particular matter aside and go on to this tax statement.

THE COURT: Your option. You may proceed in any order that you wish.

Q(By def): In regards to these tax payments by your company, I don't see Mrs. Webster appearing anywhere on these documents. Is there any specific reason for this? That's exhibit number 38.

A: Well, for your internal record purposes, we control everything by the main of using one name for lack of confusion. I mean, to avoid confusion.

Q: Avoid confusion. But if Mr. Webster, in fact, contends that this was a legitimate transaction, then I should think that his wife should at least be on there since she has not contested the transaction.

MR GOLDMAN: Objection to the form of the question.

THE COURT: Sustained.

Q(by Def): You indicate that your company pays the taxes. How are these taxes paid or are they merely tendered?

A: I don't understand the question.

Q: It's indicated here that the taxes, you tendered them with a check, that no cash was tendered.

A: We pay -- in our normal procedure we pay all taxes that we pay for the company.

Q: You actually made payment or is it merely discharge of an obligation?

THE COURT: Improper question. You may ask him how he made payments and what form it was in.

Q(by Def): What form was the payment made in in regards to taxes?

A: You sent a check to the township.

Q: You didn't send any cash.

A: Impossible to send that amount of cash.

Q: What about postal money orders?

THE COURT: I think that question's improper. You are asking what he paid or how he paid it, he has given the answer. Next question.

Q(By Def): You said that you tendered a check? Is that check represent -- is that

check credit?

MR GOLDMAN: I object, your Honor.

THE COURT: Sustained.

THE DEF: I would like a bit more time for cross-examination at a later time.

THE COURT: I am sorry. We call the witnesses and the matters are scheduled for trial with notice and this is the time for it. This is the time for it.

Q(by Def): In regards to entering into this transaction of the mortgage, was Mr. Webster given full and informed consent of what you were lending?

A: I was not at the closing at the time and I did not present this so I cannot tell what was said to you and your wife.

Q: Does your company have a standard policy that you inform recièpents of credit?

A: Yes, we meet all the government requirements for supplying sufficient information to any mortgagor.

Q: You don't lend credit?

MR GOLDMAN: I object to that question, again.

THE COURT: Sustained.

Q (by def): Regarding the purchase by Mr. Webster of this mortgaged home, what did your mortgage company tender? Was it cash or a check?

MR GOLDMAN: Been asked and answered, your Honor.

THE COURT: Yes. I would help you to this extent, if you wish, and that is you can ask him how and in what manner the mortgage was closed, and if he can tell that by an examination of the closing statement. That was exhibit 36. Do you want to ask the question?

THE DEF: I am a little bit . . .

* *

TR 212

. . . to Mr. and Mrs. Webster? What is the standard practice?

A: Standard practice would be to disburse all funds by check.

Q: By check and ---

A: Safety and convenience of people

involved.

Q: Safety and convenience? Were these funds your practice, your business practice, is that a custom?

MR GOLDMAN: Objection, your Honor.

THE COURT: Sustained.

Q (by Def): You indicated that it was standard practice for your company to disburse a check. Now, in regards to such disbursement, was that check made out to Mr. and Mrs. Webster, or was it made out to the previous owners of the mortgaged premises?

A: We make the checks only payable to the people who are entitled to receive the money, and you have to issue the money to the name of the person who is on the deed that's going to receive it.

Q: In other words, a check wouldn't be directly made out to Mr. and Mrs. Webster?

A: You were purchasing. You were not selling.

Q: So you in actuality transferred funds from your company?

A: We paid off the seller of the property that you were acquiring.

* *

TR 213

Q: The check is not payment. The check is only a discharge of an obligation.

MR GOLDMAN: Objection.

THE COURT: Sustained.

THE DEF: I have no further questions.

REDIRECT EXAMINATION BY MR. GOLDMAN:

Q: Mr. Otis, with respect to the taxes, was that held in an escrow account with respect to this particular piece of property?

A: Yes. The money is collected each time payment is made, 1/12 of it each month on the item.

Q: It's included in the monthly payment?

A: Yes.

Q: You submit the tax?

A: Yes.

Q: Fine.

MR GOLDMAN: I have no further questions.

THE COURT: Thank you sir, you may step down.

(the witness was excused)

MR GOLDMAN: The next witness will be Marlene Webber

* *

TR 220-221

. . .and why those are indicated upon that document?

A: This particular account is set up on what we call a balloon payment, one payment at the end of 12 months. However, in computing finance charge, finance charge is earned during the 12 month period, which in this case happens to overlap two years, two calendar years, so during 1978 we fully earned $71.74 in finance charge. And what was earning in 79 in the amount of three fifty-eight sixty seven.

Q: But the payment was made in 1980?

A: Yes, that's correct.

Q: It was paid in full at that time?

A: Yes, the account was paid in full January 14, 1980.

Q: January 14?

A: Yes.

Q: Fine.

MR GOLDMAN: I have no further questions.

CROSS EXAMINATION BY DEFENDANT

Q: Just a few questions with resepct to the standard business practice of General Motors Acceptance Corporation. Do you typically in the buying, purchasing of an automobile from an automobile dealership, do you typically give a check?

THE COURT: Are you talking about whether or not they gave a check to the dealer from whom a customer has purchased a car?

THE DEF: Correct.

WITNESS: Yes. In the course of our business we purchased the contract from the dealership by way of a check.

Q:(By Def): Are there any exceptions to that?

A: Not that I can think of offhand.

Perhaps the proceeds from the contract maight be used to pay off a debt the dealer owes us and it is transferred within our office.

Q: With respect to the financing of an automobile, there's a specific amount considered to be a down payment. Is that considered an interest payment.

A: No.

Q: Could you describe a little bit what it is considered?

A: Well, the down payment is not actually something that was concerned by the finance company. The down payment is paid to the seller of the vehicle and the balance of the vehcile is financed on an installment sale contract which is some cases is purchased by GMAC.

Q: So basically, the customer puts the down payment to the dealer and the difference is made up by GMAC in the form of a check?

A: Generally, yes.

THE DEF: I have no further questions.

* *

TR 230

MR GOLDMAN: Your, Honor, at this time, I move admission of Government's Exhibits 53A and 53B.

THE DEF: No objection.

THE COURT: Exhibits 53 A and B may be received.

MR GOLDMAN: I have no further questions.

THE COURT: You may cross-examine.

CROSS EXAMINATION BY THE DEFENDANT:

Q: With respect to the Government's documents 53A and 53B, does the word "income" appear anywhere on those documents, if so, would you read them, please?

A: Well, on the documents that I made out, 53A does state interest income, amount for the year 1977 '78 and '79.

Q: With respect to these documents, is interest income, that is what Mr. Webster has received from the Credit Union?

A: Yes, sir, interest income on his savings account or checking account.

Q: And interest expense would be interest received by Research Federal from Mr. Webster?

A: Yes, sir.

Q: With respect to your checking account what was the name that you gave?

A: It was called share draft account or savings draft account.

* *

TR 237 - 238

Q: . . . Dollar fifteen?

A: Yes.

Q. Fine.

MR GOLDMAN: I have no further questions.

CROSS-EXAMINATION BY THE DEFENDANT:

Q: With respect to the Government's document No. 45, would you state again what that reflects, it is interest?

A: This reflects all transactions for a quarter, and it does cover from

the beginning of the account being opened because it was opened in that quarter, to the end of the quarter.

Q: But it does reflect all the interest given to Mr. Webster on the savings account for that period of time?

A: Yes.

Q: Is there any mention of the word "income" on that sheet of paper?

A: No.

Q: Is there a heading at the top of that sheet.

A: No. This is a sheet from a book and it does label everything that is featured below as account code, account date, account amount and account balance.

Q: In regards to interest given to Mr. Webster on his account, the heading at the top of the sheet, can you recall from memory what the top of the heading says, if it says specifically "interest" or "interest income" at the top?

A: No.

Q: You don't recall?

A: No.

Q: With respect to document No. 44, you -- Mr. Webster's signature appears on that card. Does anything else appear next to his signature?

A: There's two letters, I believe it is c.t. I am not sure about that.

Q: Could it possible be a "c" period "f" period?

A: I don't know. It looks like a "c.t." to me. I am not sure what it refers to me.

Q: You don't know the significance of those particular letters?

A: No.

Q: But they do appear?

A? Yes.

THE DEF: I have no further questions at this time.

MR GOLDMAN: I have two more questions I forgot.

Q: Were you asked to search bank records to determine whether . . .

* *

A: Yes. March 15, 1979.

Q: There's been no other accounts held by the Websters during that year since then at the bank?

A: No other income.

Q: Okay, I have no further questions.

THE DEF: I have just a few questions.

CROSS-EXAMINATION BY THE DEFENDANT:

Q: Does the word "income" appear anywhere on those documents?

A: I don't know. I don't know for sure. I don't know. The signature card is not clear. I don't know if there is anything on the signature card. That would be the only document that would jave -- I can't read it.

Q: Other than the signature card, does the word "income" appear on the other documents you have, the statement of interest?

A: No.

Q: You conducted -- you were ordered to

conduct a thorough search of your records; is that not correct?

A: Yes.

Q: And in that search, did you find any checking accounts? Did Mr. Webster have any checking account with your bank?

A: No.

Q: You stated that Mr. Webster closed out his savings account on March 15, 1979. Do you know who was the Bank Manager at . . . .

* *

TR 271

. . . letter?

A: Yes.

Q: Could you read that response from Mr. Webster? First of all, give the date of that response.

A: February 9, 1980. It was addressed to R. L. Plate, District Manager.

"Dear Sir:

I received your letter of January 24, 1980 and would ask that any questions regarding the matter be

directed to me in written correspondence and with a valid, notarized signature affixed thereto.

I decline to have telephone conversation regarding the matter as there is no record generated in my behalf or otherwise.

Sincerely,

Joseph J. Webster"

Q: Is that the totality of that letter?

A: It does have a certified mail number.

Q: But it was in your file as you know IRS received it?

A: Yes.

Q: Exhibit No. 61, you described that document as a letter; is that correct?

A: Yes.

* *

TR 273-275

. ."The appointed time has been scheduled for Thursday, February 28, 1980, at 8:00 a.m. The place of the appointment is in the Federal Building 600 Church Street, Flint, Michigan.

Please contact me as soon as possible if this time is not agreeable with you.

Sincerely yours

Dave Kastelic

Internal Revenue Agent"

Q: That was sent when? What date?

A: February 13, 1980.

Q: Exhibit No. 63, could you tell us what that document is again?

A: This is a letter from Mr. Webster to Dave Kastelic.

Q: What is the date on that letter?

A: February 20, 1980.

Q: Could you please tell the jury, read that letter for the jury?

A: All right.

"Mr. Dave Kastelic:

"Your February 13, 1980 reply to my letter (addressed to Mr. R. L. Plate, dated February 9, 1980) is rather deceptive and in poor taste. In fact, your entire method of operation has been thoroughly disgusting thus far.

"I received a letter (dated January 24, 1980) presumably from your District Director, Mr. R. L. Plate, requesting that I contact you, Mr. Dave Kastelic, concerning the tax years ending December 31, 1974 through December 31, 1978. I have nothing to indicate that this letter was genuinely authorized by your district director as the letter had only a rubber stamped, printed name attached and not a personal signature affixed thereto.

"I then responded with a letter

of my own dated February 9, 1980, wherein I requested that any future correspondence be sent with a valid, notarized signature attached. I also asked that any questions regarding the matter be directed to me in written form so it would establish an unbiased witness.

"You then had the unmitigated gall to set up a personal appointement for February 28, 1980 as evidenced in your letter of February 13, 1980, all contrary to my previous request. You even dared to write that the appointment was in accordance with my letter of February 9, 1980! In addition, your written signature was not notarized in accordance with my letter either.

"I can only conclude from the above circumstances that you are adept at twisting the truth and hence, are a disingenuous person. Furthermore, I can find nothing to refute that you might be using your departmental letterheads to enhance your own, personal interests.

"Therefore, the personal appointment that you had initiated for February 28, 1980 is entirely unacceptable.

"Since I can find nothing to indicate that your actions were authorized under the auspices of the district director and your deceptive tactics lead me to believe that you are a disingenuous person, I consider this matter closed. Only until I receive correspondence from your district director in the requested matter will I consider the matter open once again.

Very truly yours,

Joseph J. Webster."

Q: I ask you to look at Exhibit No. 65 and again explain to the jury what that particular document is?

A: You mean this, before 64?

Q: What is the last document your read?

A: No. 63.

* *

TR 277-278

. . . we follow when sending out appointment letters do not require us to sign the letter with a notarized signature.

Sincerely yours,

Dave Kastelic

Internal Revenue Agent"

Q: Fine. I will show you next Exhibit No. 65. What is that particular Exhibit?

A: This is a letter from Mr. Webster to Dave Kastelic.

Q: Would you read it, please?

A: All right.

"Dear Sir:

"I have received your letter of March 12, 1980.

"Currently, I have only three letters issued by your department since January 24, 1980. I had no knowledge that a fourth letter was sent via certified mail. If there is truly a fourth letter outstanding as you claim, then you wouldn't mind divulging the certified mail number and the date it was sent. With this information supplied, I could then proceed to the post office to procure the 'outstanding' letter.

"As far as I'm concerned, this matter with you was closed per my letter of February 20, 1980; I am still waiting to hear from your district director or were your actions, indeed, unauthorized? Since the matter is currently closed, this also negates the personal appointment with you for March 27, 1980. In addition, you still have not answered the basic question of why you've insisted upon a personal appointment rather that submitting a written questionnaire through the mails; the issue of the notarized signature is somewhat small in retrospect.

"If this matter is as important as you would have me believe, then I would think the district director could have spared a little time to set the situation straight. Apparently though, my suspicions about you are being further confirmed as such.

"Had you dealt with me in an entirely

straight-forward manner, the current situation would not exist.

"Once again, I must insist upon a letter of authorization from your district director before I will consider the matter reopened.

Respectfully,

Joseph J. Webster."

* *

TR 282

. . ."that the tax is based upon. I would like to know the specific privilege that you found me engaged in as I am currently ignorant of this fact.

"Please respond as soon as possible.

Very truly yours,

Joseph J. Webster"

Q: Was there any response to Mr. Webster?

A: No.

Q: Why not?

A: Because at that time I had referred the case to CID and it's our policy not to have any further contact.

Q: What is CID?

A: Criminal Investigation Division.

Q: Did you receive another letter from

A: Yes.

Q: Is that Exhibit No. 68?

A: Yes.

Q: What date is that letter?

A: September 2, 1980.

Q: Would you read that letter to the jury?

A: This is to Mr. R. L. Plate, District Director, Internal Revenue Service.

"Dear Sir:

"Thus far you have failed to answer my letter of . . . .

* *

TR 284- 285

A: On the basis that there, we will probably have tax due in the prior year and there would have been expected tax due in the present year.

Q: You made the determination solely on a probable cause?

MR GOLDMAN: I object to that phrase, your Honor. I believe he should rephrase the question.

THE COURT: Yes.

THE DEF: I will rephrase the question.

Q: You made that determination solely on the basis that he may have had a probable tax liability?

A: Yes. I made the determination that there was a tax liability in the prior year and would be one in the present year.

Q: You made the determination that he did have a tax liability for the previous year?

A: Based on the information I had, yes.

Q: What is the amount of that tax liability?

A: I couldn't say without the forms here.

Q: And why could you say that Mr. Webster did incur a tax liability? On what basis?

A: I made that determination based on his income and the number of exemptions that he would have been entitled to.

Q: You mentioned the word "income". Is

that your interpretation?

MR GOLDMAN: I will object, your Honor. I believe that it is a question of law, question for the court to decide ultimately.

THE COURT: Overruled.

Q (By DEF): Please answer the question.

A: Would you repeat it?

Q: You mentioned the word "income," that you based Mr. Webster's tax liability on income. Is that your interpretation? What is your interpretation of "income"?

A: By "income" in that instance I meant wages you received from General Motors.

Q: Wages received by Mr. Webster from General Motors.

A: Yes.

Q: Is that a matter of law or a matter of fact?

MR GOLDMAN: Objection, your Honor.

THE COURT: Sustained.

Q (By DEF): Is there any instances to your knowledge that the wages are not taxable as income?

A: Not to my knowledge.

Q: To your knowledge, wages -- are wages treated as compensation for labor?

A: Yes.

Q: If it's compensation for labor, you recognize that as Mr. Webster receiving a gain from labor?

MR GOLDMAN: I am going to object to this line of questioning. I don't know if this witness is . . .

* *

TR 292

. . . District Director.

THE DEF: I'd like to continue cross-examination in a few more minutes to give the prosecution time to redirect. I'd like to put down a few notes and get a more clear line of cross-examination.

THE COURT: That's not the procedure. And unless Mr. Goldman would consent, I would not allow it.

MR GOLDMAN: Your Honor, I'd have no objection to a recess for a few minutes, but I would rather proceed in a normal and ordinary fashion.

THE COURT: You want like five minutes to get your thoughts together?

THE DEF: Yes, please.

THE COURT: All right. We'll ask the jury to retire to the jury room. We'll take -- my watch says 9:27 and a half, possibly be about five minutes.

(A short recess was taken at 9:28 a.m.)

(The court reconvened and the jury was returned to the courtroom at 9:35 a.m.)

THE COURT: You may proceed, Mr. Webster.

Q (By DEF): If you would review the last three letters, I believe the last three Exhibits in particular,

* *

Q: Is it possible that you made a mistake?

MR GOLDMAN: I will --

WITNESS: No.

MR GOLDMAN: I will object to the question, Your Honor.

THE COURT: Sustained.

Q (By DEF): Have you ever confused income with gross income.

A: Gross income and income could be the same or are the same thing on the top line of an income tax return. Then there are certain adjustments made to it to arrive at taxable income.

Q: So in other words, you considered Mr. Wesbster's wages not only as income but it had to first to be considered gross income?

A: Gross income, yes.

Q: But the two terms are not synonymous? They are not the same thing?

A: I would say that they are the same thing.

Q: The question pops into mind that you

say that they are the same thing but yet they are -- you don't have -- you don't always have the same difference on tax forms, whatever line that is used, the line that says for gross income, and by the time you arrive at the line that says income, a lot of instances there is a difference; is that not true?

A: The line wouldn't necessarily say income. It would start with gross income and arrive at a taxable income.

Q: Taxable income. Then there is a difference between the two?

A: Yes.

Q: You said that there is a difference between the two and yet you made an assumption that there was no difference with respect to Mr. Webster, that, in fact --

MR GOLDMAN: Your Honor, I will object to the question. It is compound, it is

it is argument. I don't think it is relevant at this point.

THE COURT: I will sustain the objection.

Q (By DEF): You mentioned earlier that Mr. -- you had determined that Mr. Webster's wages were taxable income; correct?

A: I said they were income and that would have been a part of his gross income.

Q: You said they were income, but you didn't necessarily say it was taxable income?

A: I would consider wages taxable income. They are includable in gross income.

Q: Wages are included in gross income but gross income is not the same thing as taxable income?

MR GOLDMAN: Your Honor, I am going to object. Again, I think we're getting way out from where. . .

* *

TR 314

A: Went to interview his wife.

Q: Could that not be construed as

hostility for Mr. Webster?

MR GOLDMAN: Your Honor, it asks for a conclusion of this witness. I don't think it is an appropriate question.

THE COURT: Sustained.

Q (By DEF): Were you invited into the house on that second occasion by Mrs. Webster?

A: Yes, I was.

Q: And Mr. Webster was not present?

A: That is correct.

Q: Are you familiar with the rights of the people that you are investigating?

A: Yes, I am.

Q: Are you not familar with one right that a spouse cannot be used to supply incriminating information against --

A: A spouse has a privilege of not testifying against her husband or her spouse in a court proceeding. I --

THE DEF: He is stating a philosophy.

THE COURT: He is stating his understanding of the question that you asked, the

privilege.

THE DEF: I believe the question was something to the effect --

THE COURT: The question dealt with an. . .

* *

TR 321-322

A: I don't have to be subpoenaed to appear as a witness for the government because I am a government agent.

Q: Yet it is convenient for you to leave notes at home?

MR GOLDMAN: I object to that question, your Honor.

THE COURT: I did not understand him to say he left them at home. I thought he said they were on the table.

THE DEF: Can you supply his notes?

THE COURT: Did I misunderstand you, sir?

WITNESS: No.

THE COURT: You may ask him to go down and get the notes, if you like.

Q (By DEF): Get your notes.

A: I got them.

THE DEF: Your Honor, I feel the need for a recess.

THE COURT: All right.

The jury can retire to their jury room at this time.

(The jury was excused from the courtroom at 10:20 a.m.)

I take it it's urgent.

(A recess was taken at 10:30 a.m.)

(The court reconvened and the jury was returned to the courtroom at 10:45 a.m.)

THE COURT: You may proceed, Mr. Webster.

Q (By DEF): On the first field call that you made to Mr. Webster's residence, did you come announced?

A: I did not tell you I was coming.

Q: When you showed up the second time on your field call, did you come announced?

A: No.

Q: Were you asked to leave Mr. Webster's house by Mr. Webster? Do you recall that on --

A: I don't recall we were -- I believe we terminated the conversation based

upon all the questions we had asked and I think you asked me "Is there anything else?" And after we got all our information, we left.

Q: Did Mr. Webster specifically invite you back?

A: No, he did not.

Q: Were you aware that Mr. Webster was under duress at the time?

MR GOLDMAN: Your Honor, I am going to object to that question. I don't know what type of duress Mr. Webster means, and I don't know how Mr. Brandon could know what psychological state this witness was in.

THE COURT: You are asking this witness this based -- conclusion based upon his observations, that . . .

* *

TR 362-363

. . . I did not know. I was merely following public practice. I did not know for certain.

Q: With respect to the affidavit filed on April 11, 1979, with the white-

out corrections, why did you file that document?

A: I filed that document because I wished to protect my rights guaranteed under the Constitution and I did not know that I had a legal duty to file. And that I relied on the Constitution and the interpretation given in it that I was not a person required. Further, that all I could determine was that I knew a corporation partook of a privilege granted by the State and the Federal Government and that they were taxed on income. It was a measure of the tax that I knew and, by the same reasoning, I knew that I did not knowingly partake of any privilege that would subject me to same tax as a corporation. And that I had sent this affidavit in to nullify everything previously because I knew I had a right not to incriminate myself and I felt that those documents

could be used against me in a criminal proceeding.

But I only wish to protect myself. That I did not know that I had a known legal duty that most of my answers -- most of my questioning my letters to the Internal Revenue Service did not resond. They did not say, "No, it is not based on a privilege." All I wanted to know was why. Tell me, I want to know. I have got a inquiring mind. I want to know.

Q: With respect to the self-incrimination, the Fifth Amendment return, why did you file that document?

A: I was scared. I heared stories and I had read newspaper articles and magazines that showed where the IRS could intimidate and harass people, and I felt that if I didn't send something in, that they -- they would come after me. Yet I did not know.

I did not know that I had a duty to file. I did not know that I partook of any privilege, but I sent that Fifth Amendment return in to protect my rights.

Later I got less scared and then I sent in my affidavit to nullify all the returns. And then an innocent mistake be construed as I might have a devious mind. I do not. I am just seeking the truth, that's all I want to know.

THE COURT: Please ask questions and give answers and save arguments for later.

THE DEF: I would like at this time to demonstrate for you the style of type on that-- my typewriter to give you further evidence.

THE COURT: Just -- that's what you want to do, you want to make a -- how do you propose to do it?

* *

THE COURT: May I see it, please? And then hold up for a moment. All right. Would you state the next question again, please?

Q (By DEF): Mr. Webster, what was your reaction to this letter?

A: My action to this letter was that I was being stonewalled, that Internal Revenue Service did not wish to produce records, books and records; that I was trying to find out why or even if a hearing had actually been held on their determination that I was not entitled to claim exemption from withholding. That I couldn't understand why they expected me to have my signature notarized when they previously accepted my signature as was. And even if their own correspondence, they admitted that they didn't have to get an order. I couldn't understand this.

And I had intended to pursue it further but there were other pressing matters at the time, that I couldn't attend to this.

Q: With respect to Mr. Brandon's first field call to your home, under -- what strain were you under, if any, at the time?

A: I had just got my evaluation from work and that they told me I was not promotable; that they did not know I was under criminal investigation, to which I told them that I was not. But then the very next day -- well, back up just a little bit.

That I had disclosed this to my wife, and she be came very upset because she felt that she had worked hard to get me through college and that she was looking forward to me getting promoted and that this, in turn, put a great deal of stress of on me because here I had tried to seek the truth. That I was having trouble

with the company because they felt due to my outside interests, that I wasn't promotable, and it put pressure on me.

So at the time of Agent Brandon's visit to my home, I was not relinquishing any of my rights. That I had had conversation with him on the front porch after he read me my rights, and I told him that I was not relinquishing any of my rights. I was not volunteering into his jurisdiction. That I had some questions to ask of him.

Those questions were concerning about why the district director never replied to my letters, to which Mr. Brandon replied, "He didn't have to." In addition, I asked why I had to jump through a bunch of loops to get Freedom of Information. I don't quite recall what answer he gave me. But I was under a great deal of stress. . .

* *

THE COURT: Now, what is it you seek to offer with regard to this line of questions that have to do with homo liber?

THE DEF: Homo liber l-i-b-e-r. It's a inate part of the common law.

THE COURT: I understand. How do you relate anything about that to this case?

THE DEF: I know that the jurisdiction of the Internal Revenue Service is not common law jurisdiction.

THE COURT: Go ahead. Explain how it is related to this case.

THE DEF: It is part of my intent, my intent to stay free of the jurisdiction or service of another.

THE COURT: You have been -- that's been part of your previous motion and I have already indicated to you that that is not the law and you may not do it, so don't. It's been ruled on repeatedly. Don't do it. Okay. What else? Anything else you intend, that you intend to offer that is in violation of my order

in limine filed and signed and served on you before the date of trial, that Order in Limine told you not to go into things without prior permission of the court. Now, you have just done it and that violates that Order.

* *

TR 376

. . . whatever you want in the courtroom.

THE DEF: Understood.

THE COURT: That's out. Okay?

THE DEF: I just wish to state for the record, though, that I did not know that I was subject to the Internal Revenue Code.

THE COURT: You are on the witness stand. You can testify to whatever you feel is appropriate in this case. But do not give me the homo liber matter again, nor anything similar. Okay? Do not give me the law of Merchants. Do not give me any of the other arguments about exchange of labor for compensation as not being income.

That is not the law of this country. And the Supreme Court has repeatedly said it. I do not want that heard in this courtroom. I do not want it argued. That is over. It is done with. It has been used by you ten or twelve times and the record's replete with it. Should you want to appear on that basis, you have a right to appeal on that basis, but it is not going to come into the courtroom anymore. Understood?

THE DEF: I just wanted to clarify a few matters for the record for the appeal.

THE COURT: You can clarify anything you want. You have had it clarified. You have brought it to my attention ten, tweleve times and each time you have the . . .

* *

TR 379-380

. . .to them in the manner that I did was because I was afraid of some of the -- what I had heard, things that

they did and that I wish to protect myself. That's why I insisted on written correspondence because if I went in for some interview or something, it might not all -- it might not all be written down, everything that transpired. Things that would not only be used against me, but things that would be used to exonerate me. I was afraied of that and that's why I insisted on written correspondence and why I insisted on not having an appointment.

Further, that I -- when they had ruled, said that I wasn't entitled to claim exemption from withholding, I wanted to know why. They didn't say, "Come in, we'll have a hearing." They just said, "You are not entitled to claim exemption from withholding." I wanted to know why. I sent two letters and I never received any answer to those letters.

Q: Have you been doing a lot of research

in law libraries of this state?

A: Yes, I have. I have been up in the University of Michigan, Ann Arbor, which has ten floors in the building, ten levels. I have also been in the Oakland County Circuit Court law library. I have been in the Genesee County Circuit Court law library researching. I have been in the Mott Community College library and I have been in the Flint Public Law Library, Law Section.

I have also been to person friends that happen to have limited copies of some law books and also some old copies that you can't hardly find in any library.

Q: With respect to this field call and conversation that you had with Agent Tom Brandon, did he specifically ask you if you intended to file a 1040 return?

A: Yes, he did.

Q: What was your response when Agent

Brandon asked you if you were to specifically file a 1040 tax return?

A: My response was that no, I did not intend to file a 1040 tax return because I was not a person required. That I intended to file an action in court of law to claim all my money back.

Q: Are you currently under duress, Mr. Webster?

MR GOLDMAN: Objection.

THE COURT: Sustained.

THE DEF-Q: Have you been under duress prior to the determination that you were not entitled to claim exemption from withholding.

* *

TR 383

. . . Motors Institute works, isn't it?

A: Yes, part-time work. It's changed, but it used to be that an individual would work for six weeks with his employer, then he would go to school

for six weeks. But at the time that I started employment with General Motors, I was used as a messenger over the summer.

Q: Mr. Webster, I think the question, what we're trying to determine is what age were you when you started at General Motors Institute?

A: Seventeen.

Q: Okay. So it was part of a program with General Motors Institute that you worked for GM: is that correct?

A: I --

Q: Is that correct, as a part of --

A: I am not sure. I am not sure.

Q: Okay. Let's move on. At the age of seventeen when you started work with General Motors, you filed a Form W-4, did you not?

A: That's correct.

Q: And you claimed an exemption on that Form W-4, isn't that right? You claimed yourself as an exemption?

A: I am -- I believe so. I am really not sure.

Q: What capacity are you employed with GM at this point?

A: I am currently an Engineer in the Automotive Emission Certification Group.

* *

TR 391

. . . 15, 1978?

A: '78, that's when I filed it, no.

Q: Had you received any information which mentioned it, name or from him?

A: Not to my knowledge.

Q: So what I am asking you, Mr. Webster, is that in reality you had nothing to hid concerning your right to self-incrimination in 1977; isn't that right? You had committed no criminal activity, had you?

A: No.

Q: And the only thing you had to hide was the amount of your income?

A: I haven't tried to hide it. I was

trying to protect myself from intimidation based on the fear I had from all the stories I had heard about the Internal Revenue Service.

Q: That's enough. Okay. You were trying to protect yourself; allright?

A: Yes.

Q: Mr. Webster, prior to filing that document, did you consult an attorney prior to that?

A: No, I didn't.

Q: Did you consult an accountant about the propriety of that?

A: I don't believe so.

Q: You just -- strike that.

* *

TR 404

. . . $22,000 by the General Motors Corporation?

A: I was tendered in the neighborhood of twenty-some thousand dollars.

Q: I think we have already gone through the question whether you accepted that tender or not.

A: (No response.)

Q: You say you were tendered the money. Did you receive the money?

A: I received a check from General Motors.

Q: And you cashed the checks or deposited them?

A: Getting into I had a dispute with General Motors.

Q: The question is, did you cash or deposit those checks?

A: For 1978?

Q: Each year, Mr. Webster.

A: Each year, some of them were refused and given to General Motors and they were eventually received under duress.

Q: Duress? Again, you received your money under duress?

A: Absolutely because I demanded cash from General Motors and it was their -- they said they were allowed to give checks and we went to court to find out who was wrong and -- who was wrong.

Q: What did the court say, Mr. Webster?

A: Basically --

Q: That you were wrong?

A: Not exactly. I just didn't argue it right.

* *

TR 413

. . . to file. You received four or five letters, early in 1980 you received a copy of aletter, it was an inappropriate W-4 and now you are saying it was some kind of mistake. You knew there was a problem there, didn't you, sir?

A: I didn't say that.

Q: Did you know there was a problem there? Did you know that the Internal Revenue Service was questioning your right to claim exemption?

A: I know -- I didn't understand why they had made a determination, they had not offered me a hearing.

Q: Mr. Webster --

A: I still wished to protect myself.

Q: Mr. Webster, you were offered an appointment, weren't you? But nonetheless you feel you answered those requests for appointments with letters accusing the Internal Revenue Service Agent of acting deceptively and trying to violate your rights. You were offered that opportunity, weren't you, sir?

A: I misunderstand the question since you ran several subjects together. Please repeat.

Q: Mr. Webster, you were offered a chance for an interview?

A: For a personal interview, yes.

Q: You did not take up that chance, did you?

A: I had requested a written questionnaire.

Q: Mr. Webster, after some months, you filed another W-4 form. . . .

* *

TR 420

Q With respect to this exhibit, did

you prepare this entirely by yourself?

A: No, I did not. I received help in preparing this, and that I had taken some items verbatim from materials supplied.

Q: With respect to this document, what kind of action had you filed against General Motors?

A: I had filed a civil action at law and not in equity in front of the Bench of Circuit Court for the County of Oakland. That in that account or that action I was trying to stay within the jurisdiction at law, which is common law. That I had sued them on an action of debt to recover my withheld wages back at law as opposed to having to file a claim with the Internal Revenue Service, making me subject to their jurisdiction, which is not jurisdiction under the common law. I was trying to protect myself, to stay

exclusively under the jurisdiction of the common law. That I was not trying to enter into the jurisdiction of the Internal Revenue Service. That because I had help with this document, that I was under emotional strain, that I did not pick that up. I did not realize the total, the total picture so to speak.

Q: With respect to your action against General Motors to try and get your wages withheld, try to get them back from General Motors, could you describe. . .

* *

APPENDIX E

PSYCHOLOGICAL EVALUATION OF JOSEPH WEBSTER

Ucer's Psychiatric Clinic
Inc., and Day Treatment
Center, 8401 Holly Road
Grand Blanc, MI 48439
(313) 694-2600

February 8, 1983

RE: JOSEPH WEBSTER

Barry L. Moon, P.C.
Attorney and Counselor
14292 N. Fenton Road
Fenton, MI 48430

Dear Mr. Moon:

Joseph Webster was initially seen at this clinic by Bill Atchison on 10-2-82 as a direct referral from you. At the time of intake he was diagnosed as Manic Episode, single occurrence.

Further treatment was rendered to Mr. Webster by Bill Atchison on 10-06-82, 11-17-82, 12-23-82, and 1-3-83. He was in group therapy (also rendered by Mr. Atchison) on 11-4-82, 11-11-82, 11-18-82, and 12-16-82. Psychological testing was performed by Robert Bottinelli, Ph.D. on

10-7-82, and a psychiatric evaluation was done by Erol Ucer, M.D. on 11-6-82.

At the time of the psychiatric evaluation on 11-6-82 he appeared tense, guarded, and withdrawn. Some paranoid ideation was noted and he was suspicious at times. There was no thought disorder noted. He was oriented and insight and judgment were adequate. The diagnosis was changed then to 1) Manic-Depressive - Mixed Type, 2) Paranoid Personality. When last seen at our clinic on 1-3-83 it was noted that the patient was to begin with Lithium treatment.

I hope this information is sufficient for your needs.

Sincerely,

/s/

Erol Ucer, M.D.

Psychiatrist - Director

EU/jv

PSYCHOLOGICAL EVALUATION OF JOSEPH WEBSTER

by

BILL ATCHISON, ACSW

/s/ Bill Atchison ACSW

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INTRODUCTION

Joseph J. Webster has had a psychological

and psychiatric evaluation and has been diagnosed as having Bipolar Affective Disorder, Manic Type. This statement will document the diagnosis, describe the illness, and summarize the symptoms. Further, it will reference symptomatic manifestations of the illness from Mr. Webster's, "My Philosophy", and relevant court transcripts.

The addendum will include an essential glossary, a brief historical overview of the illness, and the psychological testing.

These materials will clearly show that manifestations of the illness were present when he began his tax evasion case and when he defended himself in court, and was not competent to act as his own attorney. It further suggests that Mr. Webster may have been committable under Michigan Law.

DOCUMENTATION OF THE DIAGNOSIS

Joseph J. Webster was referred to Bill Atchison, ACSW, P.C., at Ucer Psychiatric Clinic, 8401 Holly Road, Grand Blanc, Michigan, on October 2, 1982. He was resistant to the referral, somewhat reluctant to be interviewed,

but followed through with the evaluation procedure.

The patient felt he had no psychiatric problems, or any symptoms which needed or warranted treatment. He gave a history of his legal problems and the impact of those problems on his personal and family life.

His mental status examination on October 2, 1982, revealed the following: His appearance was neat and appropriate. His attention and general behavior was essentially cooperative, but apprehensive. His facial expression and psychomotor activity were appropriate. His affect was somewhat labile. Both depressive and anxious components were present. His mental content showed no overt psychotic ideation, but was obsessive in content. He was oriented to person, time and place; his abstract thinking capacity showed no impairment in the formal examination; and his memory functions were intact. His judgment, self-concept and insight showed varying degrees of impairment.

The psychological testing was administered on October 7, 1982, by Robert Bottinelli, Ph.D.; his report is enclosed. He found Mr. Webster to be of superior intelligence, but manifesting symptomatology of the diagnosis. Mr. Webster was examined by Erol Ucer, M.D., and his diagnosis is Bipolar Affective Disorder, Manic Type.

DESCRIPTION OF BIPOLAR AFFECTIVE DISORDER, MANIC TYPE

The Disnostic and Statistical Manual-III lists Bipolar Affective Illness, Manic Type under the Affective Disorders sub-group (296 series).

It states:

> "MAJOR AFFECTIVE DISORDERS--The essential feature is an illness involving either a manic episode (see below) or a major depressive episode. These major affective episodes are not diagnosed if the affective disturbance is due to an Organic

Mental Disorder or if it is a superimposed on Schizophrenia.

"Manic Episode--The essential feature is a distinct period when the predominant mood is either elevated, expansive, or irritable and when there are associated symptoms of the manic syndrome. These symptoms include hyperactivity, pressure of speech, flight of ideas, inflated self-esteem, decreased need for sleep, distractibility, and excessive involvement in activities that have a high potential for painful consequences, which is not recognized.

The elevated mood may be described as euphoric, unusually good, cheerful, or high; often has an infectious quality for the uninvolved observor; but is recognized as excessive by those who know the individual well. The expansive quality of the mood disturbance is characterized by unceasing and unselective enthusiasm for interacting with people and seeking involvement with other aspects of the environment. Although elevated mood is considered

the prototypical symptom, the predominant mood disturbance may be irritability, which may be most apparent when the individual is thwarted.

The hyperactivity often involves excessive planning of and participation in multiple activities (e.g. sexual occupational, political, religious). Almost invariably there is increased sociability, which includes efforts to renew old acquaintanceships and calling friends at all hours of the night. The intrusive, domineering, and demanding nature of these interactions is not recognized by the individual. Frequently, expansiveness, unwarranted optimism, grandiosity, and lack of judgment lead to such activities as buying sprees, reckless driving, foolish business investments, and sexual behavior unusual for the individual.

Often the activities have a disorganized, flamboyant, or bizarre quality, for example, dressing in colorful or strange garments, wearing excessive, poorly applied make-up, or distributing candy, money or advice to passing strangers.

Manic speech is typically loud, rapid, and difficult to interrupt. Often it is full of jokes, puns, plays on words, and amusing irrelevancies. It may become theatrical, with dramatic mannerisms and singing. Sounds rather than meaningful conceptual relationships may govern word choice (clanging). If the mood is more irritable than expansive, there may be complaints, hostile comments, and angry tirades.

Frequently there is flight of ideas, i.e., a nearly continuous flow of accelerated speech with abrupt changes from topic to topic, usually based on understandable associations, distracting stimuli, or plays on words. When flight of ideas is severe, the speech may be disorganized and incoherent. However, loosening of associations and incoherence may occur even when there is no flight of ideas, particularly if the individual is on medication.

Distractibility is usually present and manifests itself as rapid changes in speech or activity as a result of responding to various irrelevent external stimuli, such as background noise or signs or pictures on the wall.

Characteristically, there is inflated self-esteem, ranging from uncritical

self-confidence to marked grandiosity, which may be delusional. For instance, advice may be given on matters about which the individual has no special knowledge, such as how to run a mental hospital or the United Nations. Despite a lack of any particular talent, a novel may be started, music composed, or publicity sought for some impractical invention. Grandiose delusions involving a special relationship to God or some well-known figure from the political, religious, or entertainment world are common." *

In summary fashion, The Diagnostic and Statistical Manual-III lists the diagnostic criteria for a manic episode:

A. One or more distinct periods with a predominantly elevated, expansive, or irritable mood. The elevated or irritable mood must be a prominent part of the illness and relatively persistent, although it may alternate or intermingle with depressive mood.

B. Duration of at least one week (or any duration if hospitalization is necessary), during which, for most of the time, at least three of the following symptoms have persisted (four if the mood is only irritable)

* The Diagnostic and Statistical Manual-III (Third Edition), American Pyschiatric Association, Pages 206-07.

and have been present to a significant degree:

(1) increase in activity (either socially, at work, or sexually) or physical restlessness

(2) more talkative than usual or pressure to keep talking

(3) flight of ideas or subjective experience that thoughts are racing

(4) inflated self-esteem (grandiosity, which may be delusional)

(5) decreased need for sleep

(6) distractibility, i.e., attention is too easily drawn to unimportant or irrelevant external stimuli

(7) excessive involvement in activities that have a high potention for painful consequences which is not recognized, e.g. buying sprees, sexual indiscretions, foolish business investments, reckless driving.*

HISTORICAL OVERVIEW OF MANIC DEPRESSIVE ILLNESS

Manic Depressive illness is the first psychiatric illness to have been so conclusively

*Ibid, Page 208

proved to have a physological basis and the history of the treatment of this illness is summarized for the court's reference.

Dr. Ronald R. Fieve, M.D. writes in Mood-swing:

> "The therapeutic effects of lithium against mania were discovered by the Austrailian psychiatrist, John Cade in 1949."

His discovery of lithium's antimatic effect was entirely serendipitious. He suspected urea as the toxic substance causing manic states and he found it in the patient's urine. To test this hypotnesis, he needed to inject uric acid in guinea pigs, so he used lithium, which was able to form the most soluble salt, lithium urate. When he injected lithium urate (and later lithium carbonate) in guinea pigs, however, they became very lethargic instead of excited. After he had administered lithium carbonate to ten manic subjects with dramatically positive results, he reported his first findings. Lithium, he claimed, restored manic patients to normal mood states, and on maintenance doses several of his more chronic and hopeless patients became well enough

to leave the hospital.

"The publication of these remarkable findings stimulated the interest of many clinicians, and it was not long before trials with lithium salts were under way in Austrailia, France, Italy, England, and Denmark. In 1954, the first double-blind trial was conducted in Denmark by Mogens Schou. Ratings of improvement in manic behavior were made by doctors who did not know which patients received lithium and which received an inert placebo."

"In 1958 the Danish reports promted Schou's former professor, Dr. Heinrich Waelch, and Dr. Lawrence C. Kolb, then director of the New York State Psychiatric Institute and now commissioner of the New York State Department of Mental Hygiene, to encourage me to begin systematic clinical research trials in the United States. These initial trials were performed in the acute ward of the New York State Psychiatric Institute working with psychiatrist Shervert Frazier, now a Harvard professor. In 1960 Dr. Samuel Gershon, an Austrailian psychiatrist who had just arrived in America, reviewed lithium's unique action and encourage American doctors to try the drug. During the early 1960's word of lithium's dramatic action soon spread westward. An uncontrollably manic Texas professor, simultaneously writing ten books and forty research papers, was sent to New York for lithium treatment. He responded astonishingly well to the lithium that my colleagues Lawrence Kolb, Ralph Wharton, and I gave him. He was sent back to Texas 'cured' on lithium, much

to the amazement of the Texas psychiatrists who had been unable to subdue his frenetic, psychotic high for the better part of a year. They were so amazed at his rapid recovery that experiments in Galveston were then begun."

"The Texas study and the New York State Psychiatric Institute's study were presented simultaneously at the American Psychiatric Association's meeting in May, 1965. This was lithium's debut to the psychiatric profession in the United States as a treatment for mania."

"In the last 1960's interest in lithium increased among American psychiatric researchers so that it was suggested that legal limitations on the use of the drug be formally reviewed. At the time, marketing of lithium was still illegal in the United States. To use it experimentally in the hospital we had to make up capsules in the pharmacy and obtain an investigational drug number from the Food and Drug Administration."

"In response to this interest, the American Psychiatric Association created a Task Force on lithium in 1969, which assisted the FDA in the preparing of a package insert describing the drug. This time, however, its marketing was much more cautiously managed. Lithium was approved exclusively for the treatment of acute mania with insistence on careful blood monitoring and rigid clinical controls. A year later, approval for the maintenance use of lithium in manic-depressive illness was recommended."

"As I have pointed out, most clinicians

date the third psychiatric revolution--the biochemical one--to the mid 1950's when the potent antipsychotic tranquilizers and antidepressant compounds were synthesized and marketed. In truth, however, the third revolution in psychiatry began in 1949 with Cade's discovery of lithium for mania. The psychotropic tranquilizers and antidepressants, while relieving the symptoms of psychosis, anxiety, and depression, do not specifically get at the core of the illness. Lithium, in contract, biochemically assaults and controls the illness itself--the first drug to do so. Since 1949 thousands of men and women with severe mood disorders, particularly in Europe, have been successfully stabilized on lithium salts. Since its reintroduction in the United States in 1970, the drug is being given to hundreds of new patients daily. Few experiences in psychiatry are so dramatic as watching lithium carbonate in one to two weeks utterly transform a manic-depressive personality. Tranquilizers and psychic energizers in large doses have many unpleasant side effects, but lithium at optimum dosage has virtually none. Few patients object to taking lithium, especially people who have resigned themselves to living out their lives in institutions, or in paralyzing and recurrent depressions between bouts of maina."*

SYMPTOMATIC MANIFESTATIONS OF THE MANIC PHASE IN MR. WEBSTER'S BEHAVIOR, WRITINGS, AND CONDUCT IN COURT

While Mr. Webster's conduct in replete with

*Moodswing, by Ronald R. Fieve, pages 209-212.

symptomatic manifestations, and while many facets of this illness blend together, it will be documented that he displayed essentially all symptoms as listed, and specific cross references will be made to validate these. The glossary may prove useful for the psychiatric definition of terms and concepts.

The essential nature of the manic phase, as above, is a distinct period of an elevated, expansive and/or irritable mood. History taken from his wife and family substantiate that he became deeply obsessed with his tax evasion case, and felt he was taking a position (in his view) to protect both "The Constitution" and "to stand against tyranny". His documents argue "with all sincereity" that he is protecting "the common man" from governmental abuse.

The duration of Mr. Webster's manic phase extends, from family history, several months prior to beginning the court date. He was likely hypomanic both prior to and after the trial. The acute mania was present throughout much of the pre-trial and showed manifestations

during the trial, and he remains somewhat hypomanic at this writing. Without doubt, the duration exceeds the one week listed above.

The following seven symptoms listed above will be cross referenced for the convenience of the court.

(1) Increase in activity (socially, at work, or sexually) or physical restlessness: The psychiatric history as given by Mr. Webster, and collaborated by his wife relate a marked increase in "productivity" in work. He spent many weeks "researching" his case, would frequently work throughout the night, ate his meals next to his work, and would prostilize his case to others at every opportunity. All family members concerned state they were simply unable to make him cease his "research" and defense.

The court transcripts further allude to his restlessness and secondary "stress" "emotional strain" and "duress" (TR 7, 9, 14, 22, 33-40, 47-50, 52, 53, 56, 63-65, 75 and 322, 367, 368, 380, 383, 404, 420; and Supp Tr 7).

Mr. Webster's "productivity" at this is clearly manic as he was employed full time at General Motors and used quite literally, his sleeping hours for the preparation of his defense.

(2) More talkative than usual or a

pressure to keep talking: Family collaborative history substantiates this without question. Mr. Webster could not be restrained from discussing his case in any environment. During the trial, in spite of the remarkable tolerance and patience shown by the Court, Mr. Webster had to be repeatedly told that he needed to decease in an argument, to discontinue his objections, or simply decease talking. Tr 34, 40 notes his communications that were "unintelligible". Tr 150, 152, 155, 207-213, 232, 284, 287, notes his imporper form of questioning, and the relevance issue is noted in Tr 61, 66, 78-80, 163, 198, 212, 268, 297, 298, 327, 338, 347, 373, 376, 285, 296, 330.

(3) Flight of ideas or subjective experience that insights are racing: The glossary definition of flight of ideas is especially useful in understanding Mr. Webster's affidavit dated May 26, 1981.

Mr. Webster's document attempts to argue that the Internal Revenue Service has no jurisdiction to tax. He connects a series of concepts (allodial titles, proprietor, homo liber, labor, gold, negotiable check, postal order, currency, merchantile practice, banking, education, The Bill of Rights, bondage, and deception) and makes an illogical, eccentric, and bizzare interpretation as to the irrelevance. Understandably, the court calls them "gibberish" (TR 35, 38). And further,

that even the government stated that it did not understand Webster's "Theories" (TR 56).

(4) Inflated self-esteem (gradiositv, which may be delusional): Mr. Webster's document 'My Philosophy'* is a textbook example of grandiositv. He reassures the reader that 'Let there be no mistake that I stand . . . as enunciated in the Declaration of Independence . . .' and aligns himself with '. . . such patriots as Jefferson, Paine, Adams, and others'.** The texts purports to prove his essential argument and discuss his (special?) relationship with Congress. Transcripts refer numerous times to court's difficulty in understanding his reasoning.

The most florid grandiosity is manifest in the last three paragraphs.

> 'I have chosen to fight for the Constitution, truth, and freedom and to stand fast against tyranny, whether from the Internal Revenue Service, the Congress, private controlling interests, or otherwise.
>
> 'Who am I to renounce the atrocities of Nazi Germanv or Soviet Russia if I am unwilling to fight against tyranny in mv own countrv?
>
> 'If the abuses stated in the

*My Philosophy Joseph J. Webster

**Ibid

reduced copy of the Notice and Demand upon Congress are true, then Gulag Archipelago has come to America and I am a victim; the convicted dissident.'*

Mr. Webster assures the reader he is fighting for the Constitution, freedom and against tyranny. He likens his prosecutors to that of Nazi Germany and Soviet Russia and grandly proclaims himself the victim. His final phrases imply his is an American Solzheintsyn.

(5) Decreased need for sleep: Both Mr. Webster and his wife state that Mr. Webster was able to prepare his defense, and work full time at General Motors simultaneously. He would often maintain on as little as two hours sleep, and showed the full range of insomnia complaints; inability to fall asleep, restless sleep, and early morning waking. He was also able to miss sleep entirely at some times in the acutely mark phase.

(6) Distractability, i.e., attention that is too easily drawn to unimportant or irrelevant stimuli: The court transcripts already state Mr. Webster's lack of reference and his reintroducing arguments that, besides being disallowed, personally were inappropriate, illogical, or he had chosen to give them eccentric meanings. (TR 46, 49, 70, 144, 174, 157, 191, 230, 237, 238, 244, 284, 285, 296, 297.) Also, (TR 208-210, 212,

*My Philosophy-Joseph J. Webster

213, 220, 221). Irrelevance (TR 54) and inadmissibility (TR 373, 376). And further irrelevance (TR 71, 66, 78-80, 163, 198, 252, 268, 297, 298, 327, 338, 347, 373, 376, 285, 296, 330). A reading of the transcripts show concentration abilities that wax and wane, and manufacturely poor inattention to clear directions given by the court.

(7) Excessive involvement in activities that have a high potential for painful consequences: Mr. Webster was repeatedly and clearly warned by the court as to the seriousness of the consequences of both his tax evasion and his acting as his own attorney. The court speaks to Mr. Webster 'As a human being', and 'as I would speak to my son.' His family, friends and others were also unable to make Mr. Webster see the seriousness of his actions.

Frequently, though not always, paranoia traits are associated with this illness. The Diagnostic and Statistical Manual-III states:

"Mood-Congruent Psychotic Reactions:

"Mood-Congruent Psychotic Features: Delusions of hallucinations whose content is entirely consistent with the themes of inflated worth, power knowledge, identity, or special relationships to a diety or famous person: flight of ideas without apparent awareness by the individual that the speed is not understandable."

It further states that "Included are such

symptoms as persecurity delusions, thought insertions, and delusions of being controlled, whose content has no apparent relationship to any of the themes noted above."

Mr. Webster clearly showed paranoia in transcripts (TR 363, 379, 391, 408, 409; TR 362, 379, 413). And further in the government's "hostility" (TR 271, 273-275, 280, 281, 282, 314).

Committability under Michigan Law:

Mr. Webster's mental condition and psychiatric diagnosis, as documented above, address the issue of his capacity to act as counsel in his own behalf in his defense. There is also reasonable question as to whether he could have been defined as "mentally ill" and a "person requiring treatment" under the Michigan Law.

The Michigan Compiled Law states the definition of mental illness:

> "Sec 330.1400 a. As used in this chapter, 'mental illness' means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary

demands of life."

A person requiring treatment:

"330.1401 Sec 401. As used in this chapter, 'person requiring treatment' means (a), (b), or (c):

(a) A person who is mentally ill, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously, physically injure himself or another person, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

(b) A person who is mentally ill, and who as a result of that mental illness is unable to attend to those of his basic physical needs such as food, clothing, or shelter that must be attended to in order for him to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.

(c) A person who is mentally ill, whose judgment is so impaired that he is unable to understand his need for treatment and whose continued behavior as a result of his mental illness can reasonably be expected, on the basis of competent medical opinion to result in significant physical harm to himself or others. This person shall be hospitalized only under the provisions of sections 434 through 438* of this act.

*Sections 330.1434 to 330.1438

APPENDIX A-PSYCHOLOGICAL EVALUATION OF JOSEPH WEBSTER

Ucer's Psychiatric Clinic, Inc.
And Day Treatment Center
8401 Holly Road
Grand Blanc, Michigan 48439
(313) 694-2600

October 18, 1982

NAME: JOSEPH WEBSTER

BIRTHDATE: 9-4-53

AGE: 29

MARITAL STATUS: MARRIED

OCCUPATION: MECHANICAL ENGINEER

EXAMINER: ROBERT BOTTINELLI

DATE EXAMINED: 10-7-82

SEX: MALE

EDUCATION: GMI GRADUATE

TESTS ADMINISTERED

Bender Visual Motor Gestalt Test, Wechlser Adult Intelligence Scale-Revised, Thematic Apperception Test, Rorschach Ink Blot Test, The Minnesota Multiphasic Personality Inventory.

REFERRAL AND PRESENTING PROBLEMS

Mr. Webster was referred for psychological evaluation by Bill Atchison in response to a request from Mr. Webster's attorney. According to referral information, Mr. Webster was convicted on charges of tax evasion and had been sentenced to two years in prison pending the results of the appeal which is currently in progress. There is concern regarding his probable state of mind at the time of his offense as well as question regarding his current emotional status. For further information, see the intake assessment and other materials enclosed in Mr. Webster's case record.

BEHAVIORAL OBSERVATIONS

Mr. Webster presented as a somewhat short but rather athletically built adult male who was casually but neatly dressed and groomed and otherwise age-appropriate in terms of physical appearance. He wore rather thick eyeglasses throughout the course of the evaluation. Gross motor functioning was intact and

no speech irregularities were noted. Mr. Webster was perceptually oriented and presented his ideas in a logical and coherent fashion. He was candid in discussing his reasons for coming to the clinic and did not appear anxious or depressed. Demonstrated affect was otherwise within normal limits and content appropriate.

Mr. Webster was able to invest himself in the various tasks presented and seemed motivated to do his best. His general response style was one of quick efficiency with good frustration tolerance and little or no impulsivity. He was cooperative throughout the course of the evaulation and related in a congenial and friendly fashion. Obtained test results are considered an accurate reflection of current ability levels.

TEST RESULTS AND INTERPRETATIONS

Bender reproductions were of high quality with no suggestion of significant perceptual and/or cerebral dysfunction. Sequencing and progression were orderly with evidence of average to

above average organizational and planning abilities. Mr. Webster did opt to use two sheets, however, to complete the nine designs rather than attempting to fit them on a single sheet. Line quality suggests some emotional intensity and probable performance anxiety, but there were no erasures or retracings. On the Wechsler, Mr. Webster obtained a Verbal Scale IQ of 109 and a Performance Scale IQ of 122. His Full Scale IQ of 117 ranks him at the 87th percentile when his score is compared with that of other people. In other words, his overall score would surpass the expected scores of roughly 87% of those individuals comprising his age group within the population at large. Descriptively speaking, verbal and full scores fall within the High Average range of demonstrated intellectual functioning, while Mr. Webster's performance score is Superior. While a score of 10 is considered average on the various subtests comprising the Wechsler, Mr. Webster obtained the following subtest scores:

Verbal Subtests		Performance Subtests	
Information	16	Picture Completion	11
Digit Span	10	Picture Arrangement	11
Vocabulary	13	Block Design	17
Arithmetic	11	Object Assembly	16
Comprehension	11	Digit Symbol	10
Similarities	10		

Mr. Webster was found to be deficient on none of the subtests administered. His worse score was solidly average, and several scores fell within the superior to very superior ranges. Particular strengths were apparent in the areas of general fund of knowledge, knowledge of word meanings, and part-whole analysis and synthesis of abstract geometrical designs and concrete objects. Social judgment and reasoning, arithmetic reasoning, short term auditory memory, abstract thinking and verbal concept formation, perceptual acuity, and the understanding of cause and effect relationships in social situations were all quite adequate. Mr. Webster's response to one item on the Comprehension subtest was significant in terms of suggesting some

grandiosity. In response to the question "what should you do while if in the movies you were the first person to see smoke and fire?" Mr. Webster indicated that he would try to handle the situation himself with no mention of involving an authority figure on the scene such as an usher or manager.

Mr. Webster's stories on the Thematic Apperception Test are suggestive of a poor self concept with feelings of inadequacy and inferiority and a need to prove himself. Although he appears capable of supportive interpersonal involvement, there are suggestions that he feels considerable emotional disturbance and probable rejection from others. There is mild depression present but less than anticipated given Mr. Webster's legal predicament. His response to the blank card was quite grandiose, involving a ticker tape parade celebrating the return of patriotism to America and honoring those few men who were willing to take a stand against great odds.

Responses on the Rorschach Ink Blot Test are consistent with TAT results in reflecting an over-compensatory striving in response to feelings of inadequacy and inferiority. The number and variety of responses suggest considerable creativity and originality which is consistent with the above average intellectual potential demonstrated by Mr. Webster. Reality contact appears quite adequate at the present time.

Mr. Webster's profile on the Minnesota Multiphasic Personality Inventory suggests more severe disturbance than is apparent on either the Thematic Apperception Test or Rorschach Ink Blot Test. Results suggest an underlying thought disorder with grandiose and manic overtones. Difficulties may be episodic in nature with recorring symptomatology which may include delusional thinking, ideals of referance and paranoid ideation, moodiness and excitability, and underlying hostility. Poor judgment and confusion are likely to be present in addition to inner conflicts regarding sexuality and an

exaggerated need for affection. There is a probable history of difficulty with social relations and a general distrust of other people. Mr. Webster's profile is quite atypical when compared to that generally observed in criminal offenders in that there are nc antisocial or sociopathic tendencies.

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Mr. Webster was referred for psychological evaluation in order to assess his current emotional status and to obtain appropriate treatment recommendations. Demonstrated intellectual abilities fell within the High Average range of functioning with no indications of significant perceptual and/or cerebral dysfunction. Personality assessment, however, suggests an underlying thought disturbance with a poor self concept and feelings of inadequacy and inferiority. Although Mr. Webster's reality contact appears quite adequate at present, and there are no overt signs of psychosis, he may experience episodes characterized by delusions of grandeur, paranoid ideation, poor

judgment, and confusion. His personality profile is quite atypical for a criminal offender in that no antisocial or sociopathic tendencies were apparent. While it is no longer possible to ascertain Mr. Webster's emotional status at the time his offense was committed, it is quite conceivable that the emotional disturbance described above influenced his behavior at that time.

It is recommended that Mr. Webster continue to be involved in outpatient psychotherapy designed to resolve current emotional conflicts. Psychotropic medication should be considered as an adjunct to psychotherapy sessions.

/s/

Robert Bottinelli, Ph.D.

Licensed Psychologist

APPENDIX B-GLOSSARY OF TECHNICAL TERMS*

AFFECT. An immediately expressed and observed emotion. A feeling state becomes an affect when it is observable, for example, as overall

*The Diagnostic and Statistical Manual-III (Third Edition), American Psychiatric Association, Pages 353-368

demeanor, or tone and modulation of voice. Affect is to be distinguished from mood, which refers to a pervasive and sustained emotion. Affect is to mood as weather is to climate. Common examples of affect are euphoria, anger, and sadness.

Affect is "inappropriate" when it is clearly discordant with the content of the person's speech or ideation.

Affect is "labile" when it is characterized by repeated, rapid, and abrupt shifts.

ANXIETY. Apprehension, tension, or uneasiness that stems from the anticipation of danger, which may be internal or external.

BLOCKING. Interruption of a train of speech before a thought or idea has been completed.

CIRCUMSTANTIALITY. A term used to describe speech that is indirect and delayed in reaching the point because of unnecessary, tedious details, and parenthetic remarks. Circumstantial replies or statements may be prolonged for many minutes if the speaker is not interrupted and urged to get to the point. Interviewers often respond

to circumstantiality by interrupting the speaker in order to complete the process of history taking within an allotted time.

DELUSION. A false personal belief based on incorrect inference about external reality and firmly sustained in spite of what almost everyone else believes and in spite of what constitutes incontrovertible and obvious proof of evidence to the contrary.

Delusions are subdivided according to to their content:

Delusion of being controlled-A delusion in which feelings, impulses, thoughts, or actions are experienced as being not one's own, as being imposed by some external force.

Delusion, grandiose-A delusion whose content involves an exaggerated sense of one's importance, power, knowledge, or identity. It may have a religious, somatic, or other theme.

Delusion, persecutory-A delusion in which the central theme is that a person or group is being attacked, harassed, cheated, persecuted, or conspired against.

Delusion, systematized-A single delusion with multiple elaborations or a group of delusions that are all related by the individual to a single event or theme. Example: A man who failed his bar examination developed the delusion that this

occurred because of a conspiracy involving the university and the bar association. He then attributed all other difficulties in his social and occupational life to this continuing conspiracy.

FLIGHT OF IDEAS. A nearly continuous flow of accelerated speech with abrupt changes from topic to topic, usually based on understandable associations, distracting stimuli, or plays on words. When severe, the speech may be disorganized and incoherent.

Flight of ideas is most frequently seen in manic episodes.

GRANDIOSITY. An inflated appraisal of one's worth, power, knowledge, importance, or identity. When extreme, grandiosity may be of delusional proportions.

HALLUCINATION. A sensory perception without external stimulation of the relevant sensory organ.

IDEA OF REFERENCE. An idea, held less firmly than a delusion, that events, objects, or other people in the person's immediate environment have a particular and unusual meaning specifically for him or her.

ILLOGICAL THINKING. Thinking that contains clear internal contradictions or in which conclusions are reached that are clearly erroneous, given the initial premises. Markedly illogical thinking may lead to, or result from, a delusional belief or may be observed in the absence of a delusion.

INCOHERENCE. Speech that, for the most part, is not understandable owing to any of the following: a lack of logical or meaningful connection between words, phrases, or sentences; excessive use of incomplete sentences; excessive irrelevancies or abrupt changes in subject matter; idiosyncratic word usage; distorted grammer.

LOOSENING OF ASSOCIATIONS. Thinking characterized by speech in which ideas shift from one subject to another that is completely unrealted or only obliquely related without the speaker's showing any awareness that the topics are unconnected. Statements that lack a meaningful relationship may be juxtaposed, or the individual may shift idiosyncratically from one frame

reference to another: When loosening of associations is severe, speech may be incoherent.

MOOD. A pervasive and sustained emotion that in the extreme, markedly colors the person's perception of the world. Mood is to affect as climate is to weather. Common examples of mood include depression, elation, anger, and anxiety.

Mood, euphoric. An exaggerated feeling of well being. As a technical term, euphoria implies a pathological mood. Whereas the individual with a normally elevated mood may describe himself or herself as being in "good spirits", "very happy" or "cheerful", the euphoric person is likely to exclaim that he or she is "on top of the world", "up in the clouds", or to say "I feel ecstatis", "I'm flying", or "I am high".

MOOD-CONGRUENT PSYCHOTIC FEATURES. Delusions or hallucinations whose content is entirely consistent with either a depressed or a manic mood. If the mood is manic, the content of the delusions or hallucinations would involve themes of inflated worth, power, knowledge, or identity, or special relationship to a diety or a famous

person.

NEOLOGISMS. New words invented by the subject, distortions of words, or standard words to which the subject has given new, highly idiosyncratic meaning. The judgment that neologisms are present should be made cautiously, taking into account the subject's educational and cultural background. Examples: "I was accused of midigation" (meaning the subject was accused of breaking the law). "They had an insinuating maching next door" (person explaining how her neighbors were bothering her).

OBSESSIONS. Recurrent, persistent ideas, thoughts, images, or impulses that are egodystonic, that is, they are not experienced as voluntarily produced, but rather as ideas that invade consciousness.

OVERVALUED IDEA. An unreasonable and sustained belief or idea that is maintained with less than delusional intensity. It differs from an obsessional thought in that the person holding the overvalued idea does not recognize its absurdity and thus does not struggle against it.

PRESSURE OF SPEECH. Speech that is increased in amount, accelerated, and difficult or impossible to interrupt. Usually it is also loud and emphatic. Frequently, the individual talks without any social stimulation and may continue to talk even though no one is listening.

Pressure of speech is most often seen in manic episodes.

PREDROMAL. Early sign or symptoms of a disorder.

PSYCHOMOTOR AGITATION. Excessive motor activity associates with a feeling of inner tension; the activity is usually nonproductive and repetitious.

PSYCHOTIC. A term indicating gross impairment in reality testing. It may be used to describe the behavior of an individual at a given time, or a mental disorder in which at some time during its course all individuals with the disorder have grossly impaired reality testing. When there is gross impairment in reality testing, the individual incorrectly evaluates the accuracy of his or her perceptions and thoughts and makes incorrect inferences about external reality, even

in the face of contrary evidence.

RESIDUAL. The phase of an illness that occurs after remission of the florid symptoms or the full syndrome. Examples: The residual states of Infantile Autism, Attention Deficit Disorder, and Schizophrenia.

SYMPTOM. A manifestation of a pathological condition. Although in some uses of the term it is limited to subjective complaints, in common use "symptom" includes objective signs of pathological conditions as well.

RESUME

WILLIAM MICHAEL ATCHISON, ACSW P.C.

CURRENT ADDRESS: Home-6323 Laurentian Court, Flint, Michigan, Telephone (313) 733-2574. Office 203 Metropolitan Building, N. Saginaw Street, Flint, Michigan, Telephone (313) 238-1107.

PERSONAL: I was born on October 5, 1947. I am married and have two sons, Dion Eric and Damon Eric, five years and two years respectively.

EDUCATION: Cheboygan Catholic Central, graduating Cum Laude in 1965.

My undergraduate experience began in fall

1965 at Michigan State University. I majored in a broad liberal arts degree, graduating Cum Laude in 1969.

I entered the University of Michigan's Graduate School of Social Worker in the fall of 1970 with a major in the Interpersonal Practice Sequence. This major placed emphasis on theory, technique, and practice of psychotherapy, as well as social welfare policy planning and research techniques.

INTERNSHIPS: My most useful academic experiences were my internships. My first year placement was a shared time arrangement between a day elementary school for severely emotionally impaired children and a residential treatment center for delinquent adolescents. Due to my prior experience and recommendations, I was given wide latitude to implement case planning, and I had excellent evaluations for that year.

The second year internship as a psychotherapist in a small non-urban Community Mental Health Center fixed my career choice. That experience was the most intellectually stimulating experience

of my formal education, and I have continued to build on that base.

I graduated Cum Laude with a Master's Degree in Social Work in December, 1972.

WORK EXPERIENCES: My first professional experience was a child care worker at Highfield, Inc., a residential treatment center for delinquent boys. I gained exposure and practice working within a full range of services from this clientele from the police, through the courts and probations systems, to the daily routine of treatment. I began there in August, 1969, was shortly promoted to Evening Supervisor, and again promoted to Social Worker. I terminated the above to attend graduate school in September, 1971. Darryl Zwick, Director, is a reference listed below.

In the last semester of graduate school in 1972 I accepted a job as School Social Worker for Genesee Intermediate School District. The position was one of consultation and direct service to teachers, children, and parents in

several suburban school districts. I terminated this job in the summer of 1975 to accept a long standing offer to affiliate in the private psychiatric practice. James D. Hilley, Supervisor Special Education, is a reference listed below.

My job description states responsibility for the assessment, diagnosis, treatment planning, treatment execution, and termination with adults, adolescents, and children.

I have had no fewer than 19,500 actual contact hours in individual and group psychotherapy.

I have fully developed the group treatment mode at the Clinic conducting no fewer than 250 different groups from 8 to 30 weeks duration. The groups serve a wide range of clinical needs from traditionally therapeutic structured interactional groups (men, women, men and women) to educationally oriented "preventive" groups for parents (Behavioral, socio-emotional growth and development). These groups are well attended and serve as a referral source for the clinic.

Besides direct clinical service I have served on the first committee for PSRO/medical records; the committee which helped develop for Blue Cross/Blue Shield length of treatment guidelines; retroactive study groups for population statistics; and liason work with most services that interacts with Ucer Clinic.

CONTINUING EDUCATION AND SUPERVISION: The Clinic provides regularly scheduled supervision with an M.D. for thorough review and evaluation of cases. I have taken seminars in Family Therapy (menninger), Divorce Therapy (Divorce Adjustment Institute), Medical Hypnosis, various other topics offered locally and several courses for Ph.D. level psychologist at Michigan State University. I have approximately fifty hours per year of experience.

Licenses: I currently hold A.C.S.W., C.S.W. (State of Michigan), Marriage Counselor (State of Michigan).

References, Transcripts, etc. submitted separately upon request.

Research: I have acted as co-administrator and clinical evaluator for three privately sponsored drug research projects with anti-anxiety, anti-depressant, and alcohol withdrawal medications.

References: Personal Dean Lundquist, c/o Federal Bureau Investigation, Federal Building, Tuscon, Arisona; Eron Ucer, M.D., c/o Ucer Psychiatric Clinic, 8401 Holly Road Grand Blanc, Michigan, 48439.

References: Past Employers James D. Hilley, M.A., Director, Special Education, Genesee Intermediate School District, 2413 West Maple Road, Flint, Michigan, 48507; Darrel Zwick (Former Director Highfields) Michigan Judicial Institute, Program Director, Lansing, Michigan, 48910

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Supreme Court, U.S.
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ALEXANDER L. STEVAS,

No. 82-1781

In the Supreme Court of the United States

OCTOBER TERM, 1982

JOSEPH J. WEBSTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's conduct prior to trial, including raising of "tax protestor defenses," should have caused the district court, sua sponte, to conduct a competency hearing.

2. Whether petitioner was improperly allowed to proceed without counsel in violation of the Sixth Amendment where he was financially ineligible for appointed counsel, declined to retain counsel, and was fully advised of his right to retain counsel, and of the risks associated with self-representation.

3. Whether the district court's insistence that petitioner demonstrate financial need in connection with his application for appointment of counsel violated petitioner's Fifth or Sixth Amendment rights where petitioner ultimately supplied the required affidavit and was denied appointed counsel because he had adequate financial assets, and where nothing in the affidavit was introduced in evidence against petitioner.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. A1) is unreported. The oral rulings of the district court are likewise unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 22, 1983. The petition for a writ of certiorari was filed on April 23, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted on three counts of willful failure to file tax returns for the years 1977, 1978 and 1979, in violation of 26 U.S.C. 7203 (Counts One, Three and Five), and on two counts of willfully filing false and fraudulent withholding exemption

certificates for the years 1978 and 1979, in violation of 26 U.S.C. (Supp. V) 7205 (Counts Two and Four). He was sentenced to a total of two years' imprisonment to be followed by a five-year term of probation, and received a $2500 fine.

1. Prior to trial in this case, the district court held a number of hearings regarding petitioner's right to appointed counsel and his decision to conduct his own defense. On April 7, 1981, a hearing was held to determine whether petitioner was entitled to court-appointed counsel pursuant to 18 U.S.C. (& Supp. V) 3006A. An attorney who had been provisionally appointed to represent petitioner was present at that hearing. Petitioner stated that he wished to represent himself, but requested that the court appoint advisory counsel. The district court informed petitioner of his constitutional right to be represented by counsel as well as his constitutional right to represent himself. The court permitted petitioner to confer privately with the provisionally appointed attorney for purposes of preparing an affidavit of indigency. At the conclusion of this meeting, however, petitioner informed the court that he had decided not to complete the affidavit and did not wish to be questioned under oath as to his financial status. The court accordingly refused to appoint counsel for petitioner (4/7/81 Tr. 1-14). After warning petitioner as to the seriousness of the charges against him and of the risks of acting as his own attorney,[1]

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[1]The trial judge advised petitioner as follows (4/7/81 Tr. 21):

> THE COURT: The only thing I can tell you, Mr. Webster, is that you can proceed in the manner which you are proceeding and you will end up proceeding alone, or you can consult a lawyer, engage the services of an attorney in any way that you want, or you can apply to the court for the appointment of counsel and qualify for appointment. You have to take those choices and you have to live with the consequences of those choices.
>
> THE DEFENDANT: I understand.

the district court afforded petitioner an additional opportunity to prepare a financial affidavit with the assistance of provisionally appointed counsel.

On April 9, 1981, petitioner filed with the court an "Affidavit of Poverty" (C.A. App. 15A). However, that affidavit made no reference to petitioner's income or assets or to any other circumstances that might distinguish him from any other litigant. Rather, it rested solely upon petitioner's theory that United States currency is invalid.[2] On April 15, 1981, the court entered a written order rejecting petitioner's affidavit as insufficient to warrant appointment of counsel under the Criminal Justice Act because of the absence of "adequate factual statements" (C.A. App. 15B). The court allowed petitioner yet another opportunity to submit a proper financial affidavit and appointed a different attorney to assist petitioner in preparing a financial affidavit (*id.* at 15B-15C).

Petitioner filed a financial affidavit on April 23, 1981, reflecting take-home pay of approximately $1400 per

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* * * * *

THE COURT: These are very serious charges, Mr. Webster, and I don't know how to convince you that nobody ought to be entering the courtroom who is not an expert in the courtroom. That's my gratuitous advice to you. The charges are serious, the penalties are great, and I don't know how to talk to anybody any straighter than I am talking to you.

THE DEFENDANT: Uh-huh.

[2]Petitioner's affidavit recites in pertinent part (C.A. App. 15A):

I, Joseph J. Webster, being first duly sworn, depose and state:

* * * * *

6. That I can find nothing in circulation today that accomplishes the payment of debts at law.

7. That I have nothing in mt [*sic*] possession with which to make payment of my debts at law and am, as such, insolvent.

month and his ownership of a house and lot, adjacent real property in his wife's name, two motor vehicles and (C.A. App. 15E). At a pre-trial hearing on May 5, 1981, the court advised petitioner that his assets made him ineligible for appointed counsel (5/5/81 Tr. 37, 39). The court informed petitioner that he remained free to retain counsel and that he could obtain counsel at government expense if he agreed to repay the government. Petitioner responded that he did not wish to obligate himself to the government. In light of petitioner's refusal to sign a repayment agreement, the court declined to appoint counsel. The court again emphasized to petitioner the serious nature of the charges against him and urged him to retain an attorney.[3]

2. On May 21, 1981, the trial judge held a special hearing on petitioner's motion to dismiss the indictment. At that hearing, petitioner presented various commonly used tax protestor arguments in his defense. Thus, petitioner urged,

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[3]The court stated (5/5/81 Tr. 34-36):

> I want to tell you as directly as I can, you cannot be in more serious difficulty than you are. * * *
>
> As a human being, I feel an obligation to tell you that you are in serious, deep trouble. And why you won't consult with a professional in the area, I don't know. But I don't know how to communicate with you * * *, and I don't know how to make you understand that your liberty is at stake * * *.
>
> My only function here is to make sure you have a fair trial, that's my only purpose here * * *. I don't know what to do about it. But you have a right, under the Constitution, to represent yourself. You also have a right to have an attorney appointed for you, provided you are will[ing] to undertake an agreement to repay the government for any money the government is required to pay to an attorney to represent you.
>
> * * * * *
>
> You are going to find yourself on a road down to serious trouble that will affect you and your family for the rest of your life.

inter alia, that the income tax applies only to those individuals who directly benefit from some privilege obtained from government, that wages do not constitute income, and that federal reserve notes are not lawful money. Pursuant to the government's motion in limine, the district court ruled petitioner's legal theories to be inadmissible at the trial; petitioner's motion to dismiss the indictment was denied (5/21/81 Tr. 44-73).

The issue of appointment of counsel arose again on May 28, 1981, on the second day of trial. At a special hearing held on that day, the trial judge reviewed a revised affidavit of indigency filed by petitioner as well as a report submitted by the court's pretrial services officer. The report revealed that petitioner had income from his employment in the amount of $2,140 per month and had recently quit-claimed his interest in his house to his wife. Although the trial judge again denied appointment of counsel, he nevertheless gave petitioner an additional opportunity to consult with an attorney and the court's pretrial services officer to try to reach an agreement for private retention of counsel. These conversations proved unavailing, however (5/28/81 Hearing Tr. 1-17).

3. Following his conviction and sentencing, petitioner retained counsel to represent him on appeal. Petitioner's retained counsel thereafter filed a supplemental brief in the court of appeals alleging for the first time that petitioner had not been mentally competent to stand trial. He also lodged with the court of appeals a report, dated February 8, 1983, of a psychological evaluation of petitioner, which had been done after the conclusion of petitioner's trial (Pet. App. E1-E46). The court of appeals affirmed petitioner's conviction in an unpublished judgment order.

ARGUMENT

1. Petitioner asserts (Pet. 13-15) that his behavior and conduct during the pretrial and trial proceedings created sufficient doubt as to his competency to stand trial and to knowingly and intelligently waive the right to be represented by counsel that it was incumbent upon the United States Attorney to request a competency hearing under 18 U.S.C. 4244, and that the trial judge was, in any event, required to conduct such a hearing sua sponte.

The due process clause requires a trial court to conduct a competency hearing sua sponte only when circumstances suggest the existence of a bona fide doubt as to the defendant's competency. See *Drope* v. *Missouri*, 420 U.S. 162, 179-182 (1975); *Pate* v. *Robinson*, 383 U.S. 375, 385-386 (1966). Similarly, the United States Attorney is required to file a motion for a judicial determination of competency only if there exists reasonable cause to believe that the defendant may be incompetent. 18 U.S.C. 4244. Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant factors in determining whether further inquiry is required. *Drope* v. *Missouri*, *supra*, 420 U.S. at 180.

There was nothing in petitioner's behavior or conduct during the course of district court proceedings to require a competency hearing here.[4] Petitioner's behavior during the pretrial proceedings did not reflect mental incapacity, but merely a dogmatic attempt to present tax protest theories as

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[4]Obviously, no claim of error at trial may be based upon the psychological evaluation procured by petitioner's counsel after trial for purposes of the appeal. Compare Pet. 13. In any event, the psychological evaluation lodged with the court of appeals by petitioner makes no assertion that petitioner was incompetent to stand trial (Pet. App. E1-E46).

a defense to the charges. Contrary to petitioner's suggestion (Pet. 10), his demeanor at trial was not of such a nature as to give rise to a question of his competency. Petitioner, as a layman, was obviously unversed in court procedure and understandably occasionally lost composure during the course of his self-representation. There is no indication in the record, however, that petitioner lacked a rational understanding of the proceedings against him. On the contrary, petitioner's conduct at trial indicated that he had carefully planned his defense. He cross-examined the witnesses against him and attempted to present his tax protest theories to the court and jury. Finally, there was no prior medical opinion available to the trial judge or the United States Attorney regarding petitioner's competency to stand trial. In these circumstances, no error resulted from the failure of the trial judge or the government to pursue an inquiry into petitioner's competence. See *United States* v. *Richardson*, 586 F.2d 661, 666-667 (9th Cir. 1978).

Petitioner also argues (Pet. 14-15) that his persistence in presenting tax protest arguments was a further indication of his incompetence, citing the district court's characterization of such arguments as "unintelligible" and "misguided." The obscure rhetoric and singlemindedness displayed by petitioner is typical of individuals associated with the tax protest movement. See, *e.g.*, *United States* v. *Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981); *United States* v. *Weninger*, 624 F.2d 163 (10th Cir.), cert. denied, 449 U.S. 1012 (1980). Petitioner's adherence to these arguments was not indicative of incompetency to stand trial or to waive counsel, but rather of an ideologically-motivated attempt to avoid the payment of federal income taxes. The First Amendment counsels against any automatic or presumptive inference of incompetence arising from the advocacy of unpopular political notions respecting federal taxation or any other government activity.

2. Petitioner argues (Pet. 19-32) that his waiver of counsel and election to represent himself at trial were not knowingly and intelligently made because he did not understand the nature of the charge against him and was not informed of his right to have competent counsel or of the consequences of not having the assistance of counsel. The record clearly refutes this claim.

There is no serious issue in this case as to whether petitioner was sufficiently informed of his rights to make a valid election to proceed without counsel. Indeed, this case does not fit into the waiver-of-right-to-counsel mold at all. Rather, petitioner made clear that he appreciated both his right to counsel and the advantages of professional representation by seeking appointment of counsel. That application was denied, to be sure. But the ground for denial was failure to show financial eligibility for representation at government expense. Coupled with petitioner's refusal to agree to pay the cost of his representation and his apparent unwillingness to agree to terms for private representation,[5] the result was that petitioner proceeded to represent himself. Absent a valid basis for suspecting incompetence, the court was not required to permit its processes to be stymied by petitioner's deliberate refusal to engage counsel. See *United States* v. *Romero, supra,* 640 F.2d at 1016.[6]

In any event, the record establishes that petitioner was fully informed as to his rights and the consequences of his actions. Petitioner's assertion (Pet. 30) that he did not understand the nature of the charges against him is frivolous. The transcript of the May 21, 1981, hearing on

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[5]The court repeatedly attempted to facilitate making of such an arrangement through its own suggestions and the offices of its Pre-Trial Services Department.

[6]As the district court remarked (4/7/81 Tr. 12): "You may do anything you wish, but you have to do something."

petitioner's motion to dismiss the indictment shows that petitioner clearly understood the charges against him; his asserted lack of "understanding" of the indictment was based entirely on his disagreement with the provisions of the Internal Revenue Code and his tax protest arguments (5/21/81 Tr. 44-73).

Similarly, there is no merit to petitioner's claim (Pet. 31) that he was not informed of his right to have competent counsel or of the consequences of proceeding without the assistance of counsel.[7] The trial judge fully advised petitioner of his rights under the Sixth Amendment and warned him of the inherent dangers of self-representation (4/7/81 Tr. 5, 7, 9, 13-14, 21-23; 5/5/81 Tr. 33-37, 38; 5/28/81 Tr. 7-8). Although the trial judge determined that petitioner was not entitled to appointed counsel, he repeatedly tried to persuade petitioner to secure representa tion. Petitioner was well aware that his cause would be better served with an attorney. Yet, he strategically elected to proceed pro se and to advance only discredited tax protest theories as a defense to the charges. These circumstances reflect no denial of constitutional right.[8]

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[7]To the contrary, as our factual recitation should make clear (see pages 2-5, *supra*), the district court displayed commendable care and a striking degree of persistence in this regard.

[8]Petitioner suggests (Pet. 12-14) that this Court should require that a hearing to determine competency to waive the right to be represented by counsel be held whenever a defendant indicates a desire to proceed in this manner. He urges that those proceedings should include examination of the defendant by a person or persons qualified in the field of psychology and that the defendant should be represented in those proceedings by appointed counsel, even over the defendant's objection. But where, as here, there is nothing before the court indicating the need for such a hearing, such proceedings would merely result in undue delay and expense and would raise serious questions of unwarranted interference with the rights of the defendant.

Moreover, we note that in this case petitioner was, in fact, represented by appointed counsel from March 18, 1981, prior to his second

3. Petitioner claims (Pet. 34-35), finally, that his Fifth Amendment right to due process and his privilege against self-incrimination and his Sixth Amendment right to assistance of counsel were violated when the district court required petitioner to complete a financial affidavit as a condition for seeking appointment of counsel. Petitioner's claim is frivolous, for he ultimately completed an affidavit and was denied appointment of counsel solely on grounds of financial ineligibility. Nor was any information contained in the affidavit presented to the jury for any purpose, much less as evidence of guilt upon the income tax violations with which petitioner was charged. In any event, the procedures used here were not impermissible. Petitioner never asserted his Fifth Amendment right against self-incrimination in refusing to complete the affidavit but claimed only that he was fearful he would perjure himself or submit himself to judicial control (4/7/81 Tr. 7, 11, 22). He accordingly cannot now claim that the procedures used by the court to satisfy its duty to determine petitioner's eligibility for appointment of counsel were impermissible. Under these circumstances, there could be no violation of petitioner's Fifth and Sixth Amendment rights. See *United States* v. *Peister*, 631 F.2d 658, 662 (10th Cir. 1980), cert. denied, 449 U.S. 1126 (1981); *United States* v. *Ellsworth*, 547 F.2d 1096 (9th Cir. 1976), cert. denied, 431 U.S. 931 (1977).[9]

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appearance on the indictment, until May 7, 1981, when the trial judge determined that he did not qualify for appointed counsel. A hearing was held on April 7, 1981, concerning petitioner's right to appointed counsel and his decision to conduct his own defense. Appointed counsel was present at that hearing. Appointed counsel also assisted petitioner in preparing the affidavit of indigency filed in the district court on April 23, 1981.

[9]Petitioner's reliance (Pet. 35) on *United States* v. *Anderson*, 567 F.2d 839 (8th Cir. 1977), is misplaced. There the defendant refused to complete an affidavit of indigency and proceeded to trial without a ruling on the merits of his request for appointed counsel. The court of

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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appeals held that the district court should have conducted an in camera determination of the defendant's financial ability to retain counsel and that its failure to do so impermissibly forced the defendant to choose between his Fifth and Sixth Amendment rights. The present case is totally different from *Anderson*. Here, petitioner eventually completed the financial affidavit and a determination was made by the district court prior to trial as to his eligibility for appointed counsel. Because petitioner never raised a Fifth Amendment claim below, the district court had no reason to consider alternative procedures such as in camera examination of petitioner's affidavit, which would in any event have produced the same result.

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